

BETWEEN:

1954
Mar. 19
June 22

HER MAJESTY THE QUEEN ON
THE INFORMATION OF THE
DEPUTY ATTORNEY GENERAL } PLAINTIFF,
OF CANADA

AND

SPECIALTIES DISTRIBUTORS } DEFENDANT.
LIMITED

Revenue—Sales Tax—Excise Tax Act, R.S.C. 1927, c. 179, ss. 86, 89, Sch. III, Customs Tariff, R.S.C. 1927, c. 44, as amended, Tariff item 409 f—Meaning of “agricultural implements” in Tariff item 409 f—Friction disc sharpeners considered agricultural implements.

The plaintiff claimed sales tax and penalties on the sale by the defendant of its friction disc sharpeners. The defendant denied liability on the ground that the friction disc sharpeners were agricultural implements within the meaning of tariff item 409 f of the Customs Tariff and exempt from sales tax by reason of section 89 of the Excise Tax Act and Schedule III thereof.

Held: That, in the absence of a clear expression to the contrary, words in the Customs Tariff should receive their ordinary meaning.

2. That it is not permissible to construe an Act to which the Interpretation Act applies by reference to a subsequent Act unless such subsequent Act directs how the prior Act is to be interpreted.
3. That the defendant's friction disc sharpeners were “agricultural implements, n.o.p.” within the meaning of Tariff Item 409 f and exempt from sales tax accordingly.

Information to recover sales tax and penalties under the Excise Tax Act.

R. D. Guy Q.C. and *H. A. Huppe* for plaintiff.

C. V. MacArthur Q.C. for defendant.

The action was tried before the President of the Court at Winnipeg.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT now (June 22, 1954) delivered the following judgment:

The information exhibited herein shows that the defendant has over a period of years manufactured and sold certain articles known as friction disc sharpeners and that the plaintiff claims sales tax and penalties in the sum of

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\$1,165.77 on the sales of such articles made by the defendant during the period from November 1, 1950, to December 31, 1952, and penalties in the sum of \$84.22 up to June 30, 1953.

The defendant denies liability. At the trial it was admitted that if sales tax were payable as alleged in the information the amounts claimed by the Crown were correct. There is thus no dispute about the sales or the computation of amounts, the only question being whether the sales made by the defendant attracted sales tax at all.

The claim for the tax is made under section 86 of the Excise Tax Act, formerly the Special War Revenue Act, R.S.C. 1927, Chapter 179. But section 89 provides that section 86 shall not apply to the sale or importation of the articles mentioned in Schedule III of the Act, and the defendant's contention, although not disclosed by the pleadings, is that its friction disc sharpeners are exempt from sales tax by reason of being included in Schedule III under the heading Goods Enumerated in Customs Tariff Items, one of which is Tariff Item 409 f of the Customs Tariff, R.S.C. 1927, Chapter 44, as amended, which item read in part as follows:

409 f. . . . and all other agricultural implements or agricultural machinery, n.o.p., . . .

The defendant's contention is that its friction disc sharpeners are "agricultural implements or agricultural machinery, n.o.p.," within the meaning of this Tariff Item. If they are then they are exempt from sales tax by reason of section 89 of the Excise Tax Act and Schedule III thereof.

In *Deputy Minister of National Revenue for Customs and Excise v. Parke Davis & Company Limited* (1) I expressed the opinion that, in the absence of a clear expression to the contrary, words in the Customs Tariff should receive their ordinary meaning. Cameron J. had a similar view of the meaning of words in the Excise Tax Act: *vide The King v. Planters Nut and Chocolate Company Limited* (2) and *The King v. Planters Nut & Chocolate Co. Ltd.* (3).

It is, therefore, important to ascertain the ordinary meaning of the term "agricultural implements". If the defendant's friction disc sharpeners come within such meaning it

(1) [1954] Ex. C.R. 1 at 15.

(2) [1951] Ex. C.R. 122 at 126.

(3) [1952] Ex. C.R. 91 at 92.

is not necessary to consider the ambit of the term "agricultural machinery". The word "agriculture" is defined in the New English Dictionary, Vol. I, as follows:

The science and art of cultivating the soil; including the allied pursuits of gathering in the crops and rearing live stock; tillage, husbandry, farming (in the widest sense).

and "agricultural" is defined as:

Of or pertaining to agriculture; connected with husbandry or tillage of the ground.

Webster's New International Dictionary, Second Edition, gives a somewhat wider meaning to the word "agriculture":

The art or science of cultivating the ground, and raising and harvesting crops, often including also feeding, breeding, and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use and their disposal by marketing or otherwise. In this broad use it includes farming, horticulture, forestry, dairying, sugar making, etc.

and the meaning of "agricultural" is given as:

Of, pertaining to, or dealing with, agriculture; as, *agricultural* implements, wages, education; . . .

And Funk and Wagnall New Standard Dictionary gives this definition of "agriculture":

1. The cultivation of the soil for food-products or any other useful or valuable growths of the field or garden; tillage; husbandry; also, by extension, farming, including any industry practised by a cultivator of the soil in connection with such cultivation, as forestry, fruit-raising, breeding and rearing of stock, dairying, market-gardening, etc.

and "agricultural" means:

Of, pertaining to, or engaged in agriculture; Thus the word "agricultural" has a wide meaning. The same is true of the word "implements". The new English Dictionary, Vol. V, gives this definition of it:

2. *pl.* The apparatus, or set of utensils, instruments, etc. employed in any trade or in executing any piece of work; now chiefly in *agricultural implements*, or as a synonym of "tools"; frequent as a generic term for the tools, weapons, etc. used by savage or primitive man, as *flint implements*. In *sing.* A tool, instrument.

Webster's New International Dictionary, Second Edition, defines "implement" as follows:

1. An article, as of apparel or furniture, serving to equip; also, a tool, utensil, etc., forming part of equipment for work; chiefly in *pl.*; as, *implements* of the Mass; the *implements* of trade, of husbandry, of war.

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And Funk and Wagnalls New Standard Dictionary gives this definition:

1. An instrument used in work, especially manual work; a tool or a utensil; as, the *implements* of husbandry; the *implements* of warfare.

Thus the ambit of the term "agricultural implements" is a very wide one.

I must now determine whether the defendant's friction disc sharpeners come within this ambit. Decision on this requires consideration of the use to which they are put. Detailed operating instructions for the use of the sharpener are given in the defendant's pamphlet, Exhibit 2, and Professor G. L. Shanks of the Department of Agricultural Engineering in the University of Manitoba gave evidence of the manner of its use. The disc sharpener is set on the ground behind the discs of the disc tiller or disc harrow. These discs are circular and concave and must have a cutting edge in order to serve their purpose of turning over the soil. They are arranged in a series called a gang. A disc tiller or a disc harrow may have more than one gang of discs but, ordinarily, there is only one gang. After the sharpener has been put into position all the discs in the gang are revolved by means of a belt which is crossed and runs on the surface of one of the discs at one end and on the pulley of a farm tractor at the other. The tractor supplies the power by which the gang of discs is revolved. The grinding wheel on the disc sharpener is then pressed closely against one of the discs as they are being revolved and the resulting friction grinds the surface of the disc and sharpens it to the desired degree of cutting keenness. This was a radical departure from previous processes whereby the disc was pressed against the grinding or cutting element. When the disc has been sharpened the process is repeated for the other discs until they have all been sharpened. This method of sharpening discs has replaced several other methods where other devices were used, such as a lathe in a blacksmith's shop with a cutting tool forced against the edge of the disc to cut it away, a portable grinder operated by a gasoline engine, a blacksmith shop machine driven with a belt from an engine which by pressure rolled the edge of the disc out thin and, finally, an ordinary grinding stand. The use of several of these methods involved the dismantling of the discs, which meant a great loss of time to the farmer. The

friction discs sharpener can be used without dismantling the discs. This fact and the ease of its operation made it very useful to the farmer in tilling the soil for he could maintain the discs of his disc tiller or disc harrow in the desired capacity for cutting the soil without any serious loss of time. The disc sharpener can be used wherever the disc tiller or disc harrow may happen to be provided that there is a belt and a tractor. But it has no power of its own and is not useful for any purpose other than that of sharpening the discs of a disc tiller or a disc harrow. Professor Shanks had never seen the disc sharpener in use except on a farm.

It is also important to consider how the friction disc sharpener is regarded by the various classes of persons who deal with it or use it. Professor Shanks considered that it is an agricultural implement. In his view, discs could not be used long without sharpening them and, consequently, the disc sharpener was essential to the operation of the tilling the soil. This might also be true of emery stones and other sharpeners generally. Professor Shanks realized this and based his opinion that the defendant's friction disc sharpener was an agricultural implement on the fact that its use was limited to use on a farm for the purpose of sharpening the discs of a disc tiller or a disc harrow and had no use otherwise. It was this limitation of use that made him consider that the friction disc sharpener was a farm implement. Professor Shanks also stated that the disc sharpener would be shown at a Fair as a farm implement.

Mr. D. F. Langrell, a farmer at Woodlands in Manitoba, when asked what farm implements he and his brothers had on their farm, included a friction disc sharpener of the kind made by the defendant. He used it on the farm but not elsewhere. He used it in his ordinary farming operations to sharpen his discs when necessary and did not use it for any other purpose. He did not know of any other use to which it could be put. Speaking as a farmer he regarded it as a farm implement.

Mr. H. A. Lasker, the president of the defendant, said that its friction disc sharpener was marketed and described and known to the trade and users of it as a farm implement. It is distributed to farm implement dealers and advertised in farm implement magazines such as The Farm Implement

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Dealer. It cannot be used except for sharpening the discs of a disc tiller or disc harrow and has not been sold for other than farm use. Only farmers would have any use for it. As a result of his experience in manufacturing and selling the friction disc sharpeners and the use to which they are put he would describe them as farm implements and he regarded "farm implements" and "agricultural implements" as synonymous terms.

Counsel for the plaintiff directed attention to the fact that friction disc sharpeners were expressly included in Schedule III of the Excise Tax Act under the heading Farm and Forest by an amendment of the Excise Tax Act made by section 27 of the Statutes of Canada 1952-53, Chapter 35. but the fact that they were expressly made exempt from sales tax by such amendment cannot be regarded as any indication that they were not exempt previously under Schedule III and Tariff Item 409 f. It must now be taken as settled it is not permissible to construe an Act to which the Interpretation Act applies by reference to a subsequent Act unless such subsequent Act directs how the prior Act is to be interpreted: *vide Morch v. Minister of National Revenue* (1); *Luscar Coals Ltd. v. Minister of National Revenue* (2) and *Mountain Park Coals Limited v. Minister of National Revenue* (3). Consequently, resort may not be had to the amendment of Schedule III made in 1952 in aid of the interpretation of Tariff Item 409 f as it stood prior to the amendment.

It was also urged for the plaintiff that the term "agricultural implements" meant only implements that were actually used in tilling the soil or in such agricultural operations as seeding, harvesting or the like but did not include articles that were merely ancillary to such implements, such as the defendant's friction disc sharpener. In my judgment, there is no such limitation in the ordinary meaning of the term and, certainly, the various classes of persons who dealt with or used the sharpeners did not consider that there was any such restriction of meaning. They had no doubt that the sharpeners were farm implements and, therefore, agricultural implements. In my opinion, they were right.

(1) [1949] Ex. C.R. 327 at 338. (2) [1949] Ex. C.R. 83 at 90.
 (3) [1952] Ex. C.R. 560 at 565

Consequently, I find that the defendant's friction disc sharpeners were "agricultural implements, n.o.p." within the meaning of Tariff Item 409 f and exempt from sales tax accordingly. It follows that the plaintiff's action must be dismissed with costs.

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Judgment accordingly.

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