

[HIGH COURT OF AUSTRALIA.]

THE FEDERAL COMMISSIONER OF TAXATION PLAINTIFF;

AND

BEARD, WATSON AND COMPANY LIMITED DEFENDANT.

H. C. OF A. *Sales Tax—Goods manufactured in Australia—Treated by manufacturer as retail stock prior to 1st August 1930—Sold on or after that date to unregistered persons or persons who had failed to quote certificate number—Liability to tax—Sales Tax Acts (No. 1) 1930 (Nos. 26 and 63 of 1930)—Sales Tax Assessment Act (No. 1) 1930 (No. 25 of 1930), secs. 17*, 18 (1), (2), (3)*—Sales Tax Assessment Act (No. 1A) 1930 (No. 62 of 1930), secs. 4, 5.*

1931.
 SYDNEY,
 Aug. 20;
 Sept. 3.

Gavan Duffy
 C.J., Starke,
 Evatt and
 McTiernan JJ.

Certain goods of Australian manufacture were, prior to 1st August 1930, treated by the manufacturing company (which was duly registered under the *Sales Tax Assessment Acts*) as stock for sale in its retail business. The goods in question were, on or after 1st August 1930, sold to persons who were either not registered under the Acts or had failed to quote the number of their respective certificates.

Held, that such sales came within sec. 18 (1) of the *Sales Tax Assessment Acts* (No. 1) 1930, and the sale value of the goods as so found was taxable accordingly.

* The *Sales Tax Assessment Act* (No. 1) 1930, as amended by the *Sales Tax Assessment Act* (No. 1A) 1930, provides (so far as is material) as follows:—
 Sec. 17. "Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act* (No. 1) 1930 shall be levied and paid upon the sale value of goods manufactured in Australia, either before or after the commencement of this Act, by a taxpayer and on or after the first day of August one thousand nine hundred and thirty sold by him or treated by him as stock for sale by retail or applied to his own use." Sec. 18. "(1) For the purposes of this Act, the sale value of goods, not being goods to which the next succeeding sub-section applies, which are sold on or after the first day of August one thousand nine hundred and thirty, shall be the amount for

which those goods are sold to an unregistered person, or to a registered person who has not quoted his certificate in respect of that sale. . . . (2) For the purposes of this Act the sale value of goods treated by the manufacturer of the goods on or after the first day of August one thousand nine hundred and thirty as stock for sale by him by retail, shall be the amount which would be the fair market value of those goods if sold by him by wholesale. (3) For the purposes of this Act, the sale value of goods manufactured by any person and, on or after the first day of August one thousand nine hundred and thirty, applied to his own use shall be such amount as, in the opinion of the Commissioner, would be the fair market value of the goods if sold by that person in the ordinary course of trade."

CASE STATED.

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For the purpose of determining the liability to sales tax of the sale value of certain goods manufactured by Beard, Watson & Co. Ltd., Sydney, and, prior to 1st August 1930, treated by that Company as stock for sale in its retail business, a special case, which was substantially as follows, was, under Order XXXII., rule 1, of the *High Court Rules* 1928, stated by the Commissioner of Taxation and the Company for the opinion of the High Court :—

1. The defendant in this case is, and at all relevant times was, a limited company duly incorporated under the *Companies Acts* of the State of New South Wales, and carrying on business in that State as a manufacturer with its registered office in George Street, Sydney. The defendant is, and at all times relevant was, also carrying on business in the said State as a wholesale merchant in respect of the sale of cabinets for wireless sets but, save as aforesaid, is and was carrying on business in the said State as a retailer.

2. The defendant is registered under the *Sales Tax Assessment Acts* (Nos. 1 to 9) 1930, being Acts Nos. 25, 27, 29, 31, 33, 35, 37, 39, 41, 62 and 64 to 71 of 1930 of the Commonwealth, as a manufacturer and wholesaler, the certificate of registration having been issued to it on 15th September 1930.

3. The plaintiff is claiming from the defendant the sum of £412 5s. 8d. for sales tax and additional tax under the *Sales Tax Acts* (No. 1) 1930, being Acts Nos. 26 and 63 of 1930 and the *Sales Tax Assessment Acts* (No. 1) 1930, being Acts Nos. 25 and 62 of 1930, and the sum of £4 14s. 6d. for costs.

4. The particulars indorsed on the plaintiff's writ of summons, which was issued out of this Honourable Court on 13th April 1931, show that the said sum of £412 5s. 8d. is claimed by the plaintiff to be due and payable to him by the defendant as the sales tax and additional tax under the said Acts on the sale value of goods manufactured by the defendant in Australia before 1st August 1930 which were still on hand and unsold at the commencement of business on that day, and which on or after that day and up to and including 31st July 1931 either were sold to persons not registered under the said *Sales Tax Assessment Acts* (Nos. 1 to 9) 1930 or to persons so registered but who had not under those Acts quoted their

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certificate of registration, or were applied by the defendant to its own use.

5. The goods in respect of which tax is claimed had been manufactured in Australia by the defendant prior to 1st August 1930, and had been treated by the defendant as stock for sale by retail prior to 1st August 1930, and were on or after 1st August 1930 sold by the defendant to persons not registered under the *Sales Tax Assessment Acts (Nos. 1 to 9) 1930* or to persons so registered who had not under those Acts or any of them quoted their certificate of registration.

6. The parties have concurred in stating as a special case for the opinion of the Court the following question of law arising in the cause :—

Are sales tax and additional tax chargeable under the *Sales Tax Acts (No. 1) 1930* and the *Sales Tax Assessment Acts (No. 1) 1930* upon the sale value of goods manufactured by the defendant in Australia prior to 1st August 1930, which goods were still on hand and unsold at the commencement of business on that date, and had prior to the said 1st August been treated by the defendant as stock for sale by it by retail and were on or after that date either sold to persons not registered under the *Sales Tax Assessment Acts (Nos. 1 to 9) 1930* or under any of those Acts or to persons so registered but who had not under those Acts or under any of them quoted their certificates of registration ?

E. M. Mitchell K.C. (with him *Gallagher*), for the plaintiff. The intention of the *Sales Tax Assessment Act (No. 1) 1930*, as shown by sec. 19, is that a manufacturer is taxed upon the sales value of all manufactured goods in his possession on 1st August 1930, and the way in which this is affected is shown in secs. 17 and 18 as amended. The tax is assessed on the sale value of all goods in the manufacturer's hands on or after 1st August 1930, but on a basis differing in accordance with the way in which such goods have been treated on or after that date. The test for ascertaining liability is by reference to such treatment. The Act is not concerned with what was done prior to 1st August 1930. Goods, the sale value of which is assessable for

taxation, are, under sec. 18, classified into three categories, namely, (a) all manufactured goods sold on or after 1st August 1930 by the manufacturer, not being goods treated by him on or after that date as stock for sale by retail, (b) all manufactured goods treated by the manufacturer on or after 1st August 1930 as stock for sale by retail, and (c) all manufactured goods applied by the manufacturer on or after 1st August 1930 to his own use. Sales of the subject goods are not covered by sec. 18 (2)—category (b); and, therefore, on the clear language of the Act, they come within sec. 18 (1)—category (a). No provision is made in sec. 20 for any exemption for goods treated as stock for sale by retail prior to 1st August 1930. If the defendant Company were to be exempt from taxation on these sales because it had, prior to 1st August 1930, carried the goods into stock for sale by retail, it would be placed in a position of advantage over other manufacturers who had common stock and did not carry over into stock for sale by retail. Sec. 18 (2) does not have the effect of making certain goods non-taxable, but merely accelerates the date of payment and fixes a different basis of tax.

Flannery K.C. (with him *Jelbart*), for the defendant. It is agreed that for the purposes of sales tax the Legislature intended that a manufacturer's goods should be divided into three categories—goods sold by him, goods treated by him as stock for sale by retail and goods applied to his own use (see secs. 17, 18, 21 and 24). The division is secured by a decisive act of the manufacturer, and the category into which the goods are so placed remains the category for all time. Sales tax payable in connection with such goods is found, under sec. 18, on the basis of what category they are placed in on or after 1st August 1930. The effect of that section is that if such decisive act is performed by the manufacturer prior to that date the goods concerned escape taxation, there being no sales value. All possibility of double taxation is avoided. All goods accumulated in stock for sale by retail at 1st August 1930 must escape taxation because they have no sales value, such value being found by an act which is decisively done only on or after 1st August 1930.

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E. M. Mitchell K.C., in reply. Sec. 18 (1) does not permit of any double taxation. The Act allows the division of the goods into categories according to what takes place in respect of those goods on or after 1st August 1930; operations prior to that date are to be ignored.

Cur. adv. vult.

The following written judgments were delivered :—

GAVAN DUFFY C.J. I agree with the judgment to be delivered by my brother *Evatt*.

STARKE J. The following question is stated for the opinion of the Court : “ Are sales tax and additional sales tax chargeable under the *Sales Tax Acts* (No. 1) 1930 and the *Sales Tax Assessment Acts* (No. 1) 1930 upon the sale value of goods manufactured by the defendant in Australia prior to 1st August 1930, which goods were still on hand and unsold at the commencement of business on that date, and had prior to the said 1st August been treated by the defendant as stock for sale by it by retail and were on or after that date either sold to persons not registered under the *Sales Tax Assessment Acts* (Nos. 1 to 9) 1930 or under any of those Acts or to persons so registered but who had not under those Acts or under any of them quoted their certificate of registration ? ”

The answer depends upon the construction of secs. 17 and 18 of the *Sales Tax Assessment Act* (No. 1) 1930, as amended by the Act No. 62 of 1930. By the Acts No. 26 of 1930 and No. 63 of 1930 a sales tax is imposed at the rate of two and one-half per centum (increased after 11th July 1931 by Act No. 26 of 1931) upon the sale value of goods manufactured in Australia by a taxpayer and sold by him or treated by him as stock for sale by retail or applied to his own use. But the *Sales Tax Assessment Act* (No. 1) 1930 and the *Sales Tax Assessment Act* (No. 1A) 1930 (Act No. 62) settle the limits of that tax, and provide for its assessment and the persons chargeable therewith. Thus, in sec. 17 it is enacted that the sales tax there mentioned shall be levied and paid upon the sale value of goods manufactured in Australia by a taxpayer before or after the commencement of the Act, and on or after 1st August 1930 sold by

him or treated by him as stock for sale by retail or applied to his own use. The sale value of goods in Australia is also fixed. Thus sec. 18 provides :—(1) The sale value of goods not being goods to which the next clause (2) applies which are sold on or after 1st August 1930, shall be the amount for which those goods are sold, to certain persons. (2) The sale value of goods treated by the manufacturer of the goods on or after 1st August 1930 as stock for sale by him by retail shall be the fair wholesale market price. (3) The sale value of goods manufactured by any person, and, on and after 1st August 1930, applied to his own use, shall be such amount as in the opinion of the Commissioner is the fair market value in the ordinary course of trade. Both the Tax Acts and the Assessment Acts divide the goods the subject of the tax into three classes, but the determination of the class into which the goods fall depends upon the manufacturer's acts on or after 1st August 1930. This view is borne out by sec. 21, which requires every manufacturer who during any month makes any of the sales specified in sec. 18, or treats any goods as stock for sale by him by retail, or applies to his own use any goods manufactured by him, to furnish a return thereof. It is admitted that the manufacturer had in the present case treated the goods as stock for sale by retail prior to 1st August 1930, and the argument is that the goods were thereby excluded from the second of the classes above mentioned. But if they be excluded from that class, why do they not then fall within the class of goods manufactured in Australia and sold by the taxpayer on and after 1st August 1930 ? Because, as I understand the argument, they had become irrevocably stamped, before 1st August 1930, with the character of goods treated by the taxpayer as stock for sale by retail. I cannot agree. The Acts give no character to the goods except in respect of acts done on and after 1st August 1930. Here we have a sale within the terms of sec. 18 (1), on and after 1st August 1930 ; and the taxpayer does not contend that he treated the goods on and after that date as stock for sale by retail, for that would only bring him within the provisions of sec. 18 (2).
The question stated must be answered in the affirmative.

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Evatt J.

EVATT J. The question which arises for decision is whether the Commonwealth *Sales Tax Acts* (No. 1) and the *Sales Tax Assessment Acts* (No. 1) 1930 operate in such a way as to make the defendant Company chargeable with sales tax and additional tax upon the "sale value" of certain goods. These goods were manufactured in Australia by the defendant Company prior to 1st August 1930, and were treated by it as stock for sale in its retail business before that date. At the commencement of business on 1st August, the goods were still on hand and unsold, but they were all sold on or after that date either to persons not registered under the Commonwealth Acts mentioned or to registered persons who did not quote their certificate in respect of their purchases. Such sales by the manufacturer of goods ordinarily create a liability on his part to pay sales tax upon their sale price, but the defendant seeks to avoid that result because, prior to 1st August 1930, the goods had been treated as stock for sale by it by retail.

The *Sales Tax Act* (No. 1) 1930 imposes what is called a "sales tax" at the rate of $2\frac{1}{2}$ per centum upon the sale value of goods which a taxpayer has manufactured in Australia, and afterwards has (1) sold or (2) treated as stock for sale by retail or (3) applied to his own use (No. 26 of 1930, sec. 3; No. 63 of 1930, sec. 4). Sec. 19 of the *Sales Tax Assessment Acts* provides that tax is payable by the manufacturer of the goods, the sale value of which is specified in sec. 18. The part of sec. 18, which is important for present purposes, is as follows:—

18. (1) For the purposes of this Act, the sale value of goods, not being goods to which the next succeeding sub-section applies, which are sold on or after the first day of August one thousand nine hundred and thirty, shall be the amount for which those goods are sold to an unregistered person, or to a registered person who has not quoted his certificate in respect of that sale.

(2) For the purposes of this Act, the sale value of goods treated by the manufacturer of the goods on or after the first day of August one thousand nine hundred and thirty as stock for sale by him by retail, shall be the amount which would be the fair market value of those goods if sold by him by wholesale.

Sec. 17 of the *Sales Tax Assessment Acts* defines the subject matter of sales tax as the sale value of goods manufactured by the taxpayer (whether before or after the commencement of the Act) where the goods are (a) sold on or after 1st August 1930, or (b) treated by him as stock for sale on or after 1st August 1930, or (c)

applied to his own use on or after 1st August 1930. These three descriptions clearly identify the three classes of manufactured goods struck at by the Act. Sec. 18 then enacts that a sale value will attach to the goods in the manufacturer's hands upon his performing—on or after 1st August 1930—any one of three acts—selling, treating as retail stock, or applying to his own use. The performance of one of these acts at once creates and measures the manufacturer's liability.

The argument for the taxpayer is that there is no liability to taxation if the goods have been sold or applied to the taxpayer's use prior to 1st August 1930, and that, by parity of reasoning, a treatment of goods as retail stock prior to that date should have a similar result. It is not disputed that if (as he might) the manufacturer sold the goods by retail on or after 1st August 1930, without any prior treatment of such goods as stock for sale by retail, he would be liable.

The taxpayer's contention necessarily involves the assertion that the words "not being goods to which the next succeeding sub-section applies," which occur in sec. 18 (1), indicate an exclusion or exception from sec. 18 (1) of all goods which are sold after treatment as stock for retail sale, whether such treatment occurred before or after 1st August 1930.

But this is opposed to the language used. The goods to which sec. 18 (2) applies are not all goods which are or have been treated by the manufacturer as stock for sale retail, but only those goods which are so treated on or after 1st August 1930. The object of the exclusion in sec. 18 (1) is reasonably clear. A manufacturer who sold goods retail after August 1st would, as a rule, have also treated such goods as stock for retail sale after August 1st. By sec. 18 (2) such act of treatment exposes him to a liability measured by the fair wholesale value of the goods at the time of treatment. But by sec. 18 (1), the subsequent act of selling would expose him to a second liability measured by the actual sale price, were it not for the express insertion in the sub-section of the exception mentioned.

The plain terms of sec. 18 (1) of the *Sales Tax Assessment Acts* therefore show that a sale value attaches to manufactured goods sold by the manufacturer on or after 1st August 1930, unless such

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goods were, prior to sale, but on or after 1st August 1930, treated by him as stock for retail sale. This contention is in strict accordance with the terms of sec. 17 and of the Rates Acts.

There being no exemption applicable to the case, the defendant is liable to pay taxation assessed by reference to sec. 18 (1) of the Assessment Act, and the question should be answered Yes.

McTiernan J.

MCTIERNAN J. I am of opinion that the question should be answered in the affirmative. The *Sales Tax Assessment Acts* (No. 1) 1930 levies the sales tax which is imposed by the *Sales Tax Acts* (No. 1) 1930 upon the sale value of goods manufactured in Australia before or after the commencement of the Act, and establishes three categories into which goods to which the Act applies may be put by the act of the manufacturer, which is done in relation to them. Briefly the categories are (1) goods sold by him, (2) goods treated by him as stock for sale by retail, and (3) goods applied to his own use (see sec. 17). The manufacturer of such goods is the taxpayer (sec. 19). As the tax is levied by the statute upon the sale value of the goods, the statute prescribes a method for assessing the sale value of the goods in each category, and the method differs according to the category into which the goods are put by the act of the manufacturer (see sec. 18). The goods in respect of which tax is claimed in the present case had been treated by the defendant prior to 1st August 1930 as stock for sale by it by retail. There is no special category established by the statute to which goods which had been thus treated prior to 1st August 1930, should be assigned, and no special method is prescribed for specifying the sale value of goods in that position. But the goods had been sold on or after 1st August 1930 by the manufacturer under the conditions mentioned in the special case, that is to say, to unregistered persons, or to registered persons who had not quoted their certificate; and a method is prescribed for determining the sale value of goods which the manufacturer has sold during that time and under those conditions. The goods having been sold by the manufacturer at the time and in the manner which have been stated, it appears to me that all the conditions mentioned in sec. 18 (1) were fulfilled and the sub-section operated and determined the amount at which the sale

value of the goods should be assessed for the purposes of taxation and upon that sum sales tax was levied and is payable (sec. 17). The only ground of exception mentioned in sub-sec. 1 of sec. 18 to that amount becoming the sale value of any goods to which the section refers, and which are sold on or after 1st August, is that sub-sec. 2 of sec. 18 applies to the goods. That sub-section obviously does not apply to the goods in this case. Sec. 18 (1) being applicable to the goods in respect of which tax is claimed by the plaintiff, it does not appear to me relevant or material that they may be said to belong to a category, namely, goods treated by the manufacturer before 1st August 1930 as stock for sale by him by retail, and the Legislature has not provided any special method for determining the sale value of goods in that category. In my opinion, there is no expression or implication of any legislative intention in the Act that the goods, in respect of which sale tax is claimed should not be within its scope, or that an exemption has been granted in respect of them.

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McTiernan J.

Question answered : Yes.

Solicitor for the plaintiff, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

Solicitors for the defendant, *R. N. Henderson & Co.*

J. B.