

[HIGH COURT OF AUSTRALIA.]

THE FEDERAL COMMISSIONER OF TAXA-
TION } APPELLANT;

AND

COMMONWEALTH QUARRIES (FOOTSCRAY)
PROPRIETARY LIMITED } RESPONDENT.

H. C. OF A. *Sales Tax*—"Sale value of goods"—Contract price—Deduction—"Amount payable
1939. in respect of sales tax"—*Sales Tax Assessment Act (No. 1) 1930-1935 (No. 25
of 1930—No. 45 of 1935), sec. 18.*

MELBOURNE,

Mar. 24.

Latham C.J.,
Rich and
Starke JJ.

Where the sale price of goods includes an amount charged in respect of sales tax to be paid by the vendor, the amount which, under sec. 18 (5) of the *Sales Tax Assessment Act (No. 1) 1930-1935*, is to be deducted from the price for the purpose of ascertaining the "sale value" of the goods is the amount properly payable by way of sales tax in respect of the sale, and (if there is a difference) not the amount in fact included in the sale price.

CASE STATED.

On an appeal by the Federal Commissioner of Taxation to the High Court from a determination of the board of review pursuant to the order of the High Court in *Commonwealth Quarries (Footscray) Pty. Ltd. v. Federal Commissioner of Taxation* (1), Latham C.J. stated for the opinion of the Full Court a case which was substantially as follows :—

1. The respondent is a company incorporated under the *Companies Act* of the State of Victoria and at all material times carried on business as a quarrymaster in the said State.

2. In the carrying on of its business the respondent was at all material times a manufacturer within the meaning of the *Sales Tax Assessment Acts* of certain goods within the meaning of those Acts upon the sale value of which the respondent became liable to pay sales tax as the manufacturer thereof.

3. During the period commencing on 1st January 1934 and ending on 31st July 1934 the respondent sold to its customers partly by wholesale and partly by retail certain quantities of the goods and charged its customers therefor a price calculated by the respondent by reference to (a) the ex-quarry price of the goods, plus (b) the cost of cartage of the goods from the quarry from which the goods were to be supplied to the place of delivery agreed on with the purchaser, plus (c) an amount of sales tax calculated only on the ex-quarry price of the goods. This calculation of the price charged to its customers was made by the respondent independently of the customers, and no division or allocation of the price charged appeared on the invoices for the goods.

4. The respondent made monthly returns of sales and sales tax for the period referred to in the last preceding paragraph for the purposes of the Acts, deducting in such returns from the price which it charged its customers an amount representing the items *b* and *c* mentioned in par. 3 hereof, and paid sales tax upon a sale value shown in such return and arrived at by making such deductions as aforesaid. The following is a summary of the returns showing how the respondent arrived at the sale values therein shown:—

Deductions made by respondent.

Month.	Price charged to customers.	Cartage (being item <i>b</i> mentioned in par. 3 hereof).	Sales tax (being item <i>c</i> mentioned in par. 3 hereof).	Total of amounts so deducted.	Sale value.
1934					
January ..	£480 19 1	£167 2 6	£14 18 10	£182 1 4	£298 17 9
February ..	£123 17 0	£35 19 0	£4 3 9	£40 2 9	£83 14 3
March ..	£80 14 6	£25 6 0	£2 12 9	£27 18 9	£52 15 9
April ..	£13 2 10	£4 18 0	7 10	£5 5 10	£7 17 0
May ..	£40 12 0	—	£1 18 8	£1 18 8	£38 13 4
June ..	£126 1 0	£25 4 0	£4 16 1	£30 0 1	£96 0 11
July ..	£47 2 1	£17 14 9	£1 8 0	£19 2 9	£27 19 4

5. On 20th January 1937 the appellant, pursuant to the provisions of sec. 25 of the *Sales Tax Assessment Act* (No. 1) 1930-1935, assessed the sale value of the goods sold by the respondent during the above-mentioned period at an additional amount of £276 4s. 3d. and calculated the further tax which was payable by the respondent at £13 16s. 3d. and on such date duly caused notice in writing of the assessment and of such further tax to be given to the respondent.

H. C. OF A.
1939.
FEDERAL
COMMISSIONER OF
TAXATION
v.
COMMON-
WEALTH
QUARRIES
(FOOTSCRAY)
PTY. LTD.

H. C. OF A.
1939.

FEDERAL
COMMISSIONER OF
TAXATION
v.
COMMON-
WEALTH
QUARRIES
(FOOTSCRAY)
PTY. LTD.

The sum of £276 4s. 3d. represented the total sum set forth in the aforesaid summary of the returns as being deductions made by the respondent in such returns in respect of "cartage."

6. The respondent appealed from the assessment, and the High Court determined that the sale value of the goods for the purpose of the Act was the amount charged to its customers by the respondent for the goods less the amount, if any, properly allowable under sec. 18 (5) of the Act as an amount payable in respect of sales tax (*Commonwealth Quarries (Footscray) Pty. Ltd. v. Federal Commissioner of Taxation* (1)).

7. The matter then came for determination before the board of review, which determined that the amount allowable to the respondent under sec. 18 (5) of the Act as an amount payable in respect of sales tax was the amount which was properly payable by the respondent calculated upon the total sale value of the goods.

The following question was stated for the determination of the Full Court:—

Whether upon the proper construction of the said Act in ascertaining the sale value of the goods sold by the respondent in the circumstances hereinbefore set out the amount to be deducted pursuant to sub-sec. 5 of sec. 18 from the amount charged to its customers by the respondent for such goods is the amount actually paid by it for sales tax or the amount which should have been paid by it for sales tax on the sale value of the said goods as assessed by the appellant or some other and what amount.

Wilbur Ham K.C. and *Hudson*, for the appellant. It is a question of fact whether the amount of sales tax was included in the price of the goods (*Commonwealth Quarries (Footscray) Pty. Ltd. v. Federal Commissioner of Taxation* (2)). Secs. 17, 18 and 19 of the *Sales Tax Assessment Act* (No. 1) deal with the ascertainment of sale value. That term includes a fictional price as well as an actual sale price.

Adam, for the respondent. The question is: What is the sale value of the goods? This is ascertained by looking at the provisions

(1) (1938) 59 C.L.R. 111.

(2) (1938) 59 C.L.R., at pp. 115, 116.

of the Act only. Sec. 18 (5) precludes the levying of sales tax on sales tax. The rate of sales tax is five per centum ; therefore, to obtain the sale value twenty twenty-firsts of the sale price is taken and one twenty-first is the sales tax. The word " purchaser " should not be implied in sec. 18 (5) after the word " payable." Unless there is something express, then the word " payable " applies to the person paying the tax. Compare secs. 17 and 19. Those sections indicate that payable refers to the taxpayer. [He referred to secs. 30, 35 and 70A.] [He was stopped.]

H. C. OF A.
1939.
FEDERAL
COMMISSIONER OF
TAXATION
v.
COMMON-
WEALTH
QUARRIES
(FOOTSCRAY)
PTY. LTD.

Hudson, in reply.

The following judgments were delivered :—

LATHAM C.J. This is a case stated on an appeal to this court from a decision of the board of review under the provisions of sec. 42 (6) of the *Sales Tax Assessment Act (No. 1) 1930-1935*.

In a prior case between the same parties (*Commonwealth Quarries (Footscray) Pty. Ltd. v. Federal Commissioner of Taxation* (1)) it was held that, where the sale price of goods includes the cost of delivery, the sale value of the goods for the purposes of sec. 18 of the *Sales Tax Assessment Act (No. 1) 1930-1935* is the price actually charged, including the cost of delivery. The order made on that occasion was in these terms: " Upon the proper construction of the *Sales Tax Assessment Act (No. 1) 1930-1935* the sale value of the said goods for the purpose of the Act is the amount charged to its customers by the taxpayer company for such goods less the amount, if any, properly allowable under sec. 18 (5) of the Act as an amount payable in respect of sales tax."

The question which now arises for determination is : What amount if any is properly allowable under sec. 18 (5) ?

Sec. 18 (5) provides : " For the purposes of this Act, the sale value of goods shall not be taken to include any amount payable in respect of sales tax," the rest of the section being immaterial for the purposes of this case.

In the present case Commonwealth Quarries (Footscray) Pty. Ltd. were vendors of metal screenings, crushed stone and the like, and the prices of its products were in fact made up as follows : The

H. C. OF A.
1939.

FEDERAL
COMMISSIONER OF
TAXATION
v.
COMMON-
WEALTH
QUARRIES
(FOOTSCRAY)
PTY. LTD.

Latham C.J.

price ex quarry together with, first, the cost of delivery and, secondly, sales tax. The total charge to its customers comprised these three items, but the customers had no knowledge at all of how the charge was made up or calculated. They knew only the total price of the goods.

On the former occasion this court held that the sale value of the goods included the cost of delivery, but it left open the question as to what deduction should be allowed under sec. 18 (5).

Two contentions have been submitted in this case :—(a) For the appellant it was contended that in ascertaining the sale value of goods the amount to be deducted from the sale price is the amount charged by the company to the customer as and for the amount paid by the company for sales tax, that is, being the amount calculated in the total price to the customers. This view interprets sale value as meaning that fixed between the parties. (b) The other view refers to the amount payable in law by virtue of the Act—the proper sale value as ascertained under the Act and not according to the erroneous ideas of the parties themselves as to what the sales tax is or should be.

Sales tax is not to be charged on sales tax itself, that is, it is not to be paid on any portion of the price paid over to the revenue authority as and by way of taxation. That is the idea on which sub-sec. 5 is based. I am not professing to construe sub-sec. 5 completely but rather looking to the policy of the Act.

Sec. 18 (5) provides a rule applying to all cases. Sale value does not include sales tax, and, where in transactions no mention of sales tax is made, it is urged for the appellant that it cannot be said that any sales tax has been paid, and, no reference to it having been made, then no deduction can be allowed. In other words, the section would not apply in some cases and would in others.

But on the contrary view the section will apply in all cases. The contrary view is that the amount payable is that which accords with the law and is accordingly properly payable by the sales-taxpayer. Mr. *Adam* correctly stated the meaning of the word “payable” when he construed it as meaning payable in accordance with, pursuant to, and under and by virtue of, the provisions of the Act. The other construction of this word, namely, implying the words “by the

purchaser" after it, would result in an arbitrary application of the provisions of the Act to different taxpayers, whereas the respondent's interpretation results in a consistent application of the law to all.

In my opinion the answer to the question in the case stated should be: Upon the proper construction of the Act, in ascertaining the sale value of the goods sold by the respondent the amount to be deducted pursuant to sub-sec. 5 of sec. 18 from the amount charged to the customer by the respondent for such goods is the amount which should have been paid by it for sales tax.

H. C. OF A.

1939.

FEDERAL
COMMISSIONER OF
TAXATION

v.

COMMON-
WEALTH
QUARRIES
(FOOTSCRAY)
PTY. LTD.

RICH J. I would answer the question submitted thus: The amount to be deducted is the amount payable in law upon the price at which the goods were sold, that is to say, the appropriate rate or percentage of tax which, when added to the sale value, will produce that price.

STARKE J. I agree with the opinion expressed by the Chief Justice. I would only add an extract from the opinion of the board of review to what has been said by the Chief Justice. It illustrates what he has stated: "In other words, for the purpose of applying the order of the High Court, it must be considered that the sale price charged to a customer by the taxpayer company consists of only two factors, viz., sale value and sales tax, and that the latter represents the full amount of legal liability in respect of the former. Thus, if the rate of sales tax is five per cent and the sale price is £21, the amount of sales tax included in the sale price is £1."

Question referred answered by declaring that upon the proper construction of the said Act in ascertaining the sale value of the goods sold by the respondent in the circumstances of the case the amount to be deducted pursuant to sub-sec. 5 of sec. 18 from the amount charged to its customers by the respondent for such goods is the amount which should have been paid by it for sales tax on the sale value of the said goods. Case remitted to the Chief Justice for determination. Costs of case to be costs in the appeal.

Solicitor for the appellant, *H. F. E. Whitlam*, Crown Solicitor for the Commonwealth.

Solicitors for the respondent, *Weigall & Crowther*.

H. D. W.