[HIGH COURT OF AUSTRALIA.]

DAVIES COOP AND COMPANY LIMITED . APPELLANT; DEFENDANT,

AND

FEDERAL COMMISSIONER OF TAXATION . RESPONDENT. PLAINTIFF,

H. C. OF A. 1947-1948.

MELBOURNE, 1947, *Oct.* 20.

SYDNEY, *Nov.* 17.

Starke J.

MELBOURNE, 1948, *June* 9-11.

SYDNEY, *Aug.* 18.

Latham C.J., Rich, Dixon, McTiernan and Williams JJ.

Sales Tax—Incidence—Exemption—"Aids to manufacture"—"Plant"—Cardboard cones on which yarn wound by manufacturer of cotton yarn and piece goods—Cones purchased from another manufacturer, purchaser quoting certificate—Yarn wound on cones for use on looms in manufacture of piece goods—Some used on own looms by manufacturer of yarn; others sold to purchasers quoting certificates—Effect of erroneous quotation—Whether cones exempt from tax—Sales Tax Assessment Act (*No.* 1) 1930-1942 (*No.* 25 *of* 1930—*No.* 54 *of* 1942), *s.* 12 (2)—*Sales Tax Assessment Act* (*No.* 2) 1930-1936 (*No.* 27 *of* 1930—*No.* 78 *of* 1936), *ss.* 4, 5—*Sales Tax Assessment Act* (*No.* 4) 1930-1936 (*No.* 31 *of* 1930—*No.* 78 *of* 1936), *ss.* 3-5—*Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1944 (*No.* 60 *of* 1935—*No.* 31 *of* 1944), *s.* 5, *First Schedule, Item* 113c—*Sales Tax Regulations* (*S.R.* 1930 *No.* 156—1944 *No.* 115), *regs.* 4, 12.

The *Sales Tax Assessment Act* (*No.* 2) 1930-1936 provides by s. 4 (1): "For the purposes of this Act, the sale value of goods . . . shall be the amount for which those goods are sold by a registered person . . . who purchased the goods from the manufacturer thereof . . . to a registered person who has not quoted his certificate in respect of that purchase," and, by s. 5: "Sales tax shall be paid by the vendor of goods the sale value of which is specified in" s. 4.

Held, by *Latham* C.J., *Rich, Dixon, McTiernan* and *Williams* JJ. (reversing the decision of *Starke* J. on this point), that in s. 4 (1) the expression "quoted his certificate" refers to actual—not necessarily lawful—quotation and, therefore, that s. 5 does not impose tax on the vendor if, being unaware that a quotation is erroneous, he accepts it as valid.

The appellant company was a manufacturer and wholesale vendor of cotton yarn and woven and knitted piece goods. When manufacturing yarn it used, as bearers, cardboard cones which it purchased. As yarn came from the spinning machine it was wound on a cone in a special manner so that, when

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placed in a creel, it could be drawn evenly off the cone into a weaving or knitting machine. The appellant used some of the cones of yarn on its own weaving and knitting machines to produce piece goods. When it purchased the cones the appellant quoted its certificate. The Commissioner claimed that, under ss. 3-5 of the *Sales Tax Assessment Act* (*No.* 4) 1930-1936, the appellant was liable for tax on the sale value of the cones.

Held, by *Starke* J., and on appeal by *Latham* C.J., *Rich*, *Dixon*, *McTiernan* and *Williams* JJ., that the cones were " aids to manufacture " within the definition of that phrase in reg. 4 (1) (*c*) of the *Sales Tax Regulations* 1930-1944, and, by *Latham* C.J., *Rich*, *Dixon*, *McTiernan* and *Williams* JJ. (reversing the decision of *Starke* J. on this point), that they were not excluded from the definition by reg. 4 (1) (*h*) as being " plant." Accordingly, the cones were exempt from sales tax by virtue of s. 5 and Item 113c in the First Schedule of the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1944.

APPEAL from STARKE J.

In an action in the High Court the Federal Commissioner of Taxation claimed of Davies Coop and Co. Ltd. an amount alleged to be due for sales tax. The facts appear in the judgments hereunder.

T. W. Smith and *D. I. Menzies*, for the plaintiff.

P. D. Phillips K.C. and *Gillard*, for the defendant.

Cur. adv. vult.

1947, Nov. 17.

STARKE J. delivered the following written judgment :—

This action is brought by the Commissioner of Taxation to recover £608 1s. 10d. sales tax upon the sale value of certain cones and tubes purchased by the defendant in Australia or imported by the defendant into Australia, and in respect of which the defendant had quoted its certificate. The goods, it was alleged, were applied by the defendant to its own use or were sold to persons who it was proved quoted their certificates in respect of each purchase.

The plaintiff launched his case by a certificate of the Deputy Commissioner of Taxation certifying in accordance with the *Sales Tax Procedure Act* 1934-1940 that the sum claimed was due.

The cones and tubes are used in connection with weaving and knitting operations. Yarn is wound by the defendant upon the cones and tubes. And, so wound, some of the cones and tubes are placed in the defendant's weaving or knitting machines, the yarn drawn off and used in its operations of weaving and knitting. The

remaining cones and tubes upon which yarn is wound are sold together to other weavers, knitters or manufacturers. The cost of the cones and tubes is calculated and included in the charge to the purchaser. The cones and tubes can only be used three or four times when they become distorted or worn out.

The plaintiff contends that all the cones and tubes were applied by the defendant to its own use. They were so applied, it was said, when they were put to their primary purpose, namely, winding yarn upon them. Those that were used by the defendant in its own weaving and knitting operations were doubtless so applied but those upon which yarn was wound by the defendant and sold to other weavers and knitters and manufacturers, were not, I think, so applied. The expression " applied to his own use " in the *Sales Tax Act* points to some use of the goods by the taxpayer himself and not to the use by some other manufacturer or person of those goods unaltered in form and condition, but prepared for use by that other manufacturer or person in weaving and knitting operations as by winding yarn around them.

The defendant contends that the goods applied by the defendant to its own use are exempt from sales tax by force of Item 113c in the schedule to the *Sales Tax Exemption Act* 1935-1938, whilst the plaintiff relies upon the exclusion from that item of the goods covered by item (*h*), the interpretation clause, " aids to manufacture " of the *Sales Tax Regulations*.

The exemption, so far as material, is :—Goods applied by a registered person to his own use as (*a*) aids to manufacture. For the purposes of this item, " aids to manufacture " means aids to manufacture as defined by regulations made under the *Sales Tax Assessment Acts*. By these regulations " Aids to manufacture," so far as relevant, means goods for use by a manufacturer of goods (see Schedule to *Exemption Act* and also *Sales Tax Regulation* 4 (1)); (*a*) in the actual processing or treatment of goods to be used in, wrought into or attached to goods to be manufactured by him. (*c*) in any processing or treatment for the purpose of bringing goods manufactured by him into or maintaining those goods in the form or condition in which he markets or uses those goods ; but does not include (*h*) goods for use as, or as parts of, machinery, implements, tools, patterns, dies, moulds, cores or other plant. " Goods to be used in, wrought into or attached to goods to be manufactured " means goods to be so used or dealt with that those goods, or some essential element thereof, will form an integral part of the goods to be manufactured, and will remain in those goods as an element essential to the goods in their completely manufactured condition,

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but does not include goods to be so used that those goods, or some element thereof, will, or may, remain adventitiously in the goods to be manufactured, if the goods to be so used are intended to be used primarily as aids to manufacture.

In my opinion the cones and tubes applied by the defendant to its own use are not within clause (*a*) of "aids to manufacture." Yarn is wound around the cones and tubes but they are not for use in the actual processing or treatment of any goods to be used in goods to be manufactured by the defendant. The yarn is not processed or treated in any way.

The cones and tubes, however, do appear to me to fall with the terms of clause (*c*) of "Aids to manufacture"—goods for use by a manufacturer of goods in any processing or treatment for the purpose of bringing goods manufactured by him into the form or condition in which he markets those goods. The processing or treatment here is the weaving or knitting operations in which the cones and tubes wound with yarn are used and play their part. The purpose of the weaving or knitting is to bring the goods manufactured by the defendant into the form and condition in which the same are marketed.

But then there is the exclusion from this exemption of goods for use as, or as parts of, machinery, cores or other plant. I reject the idea that the cones and tubes are cores within the meaning of this exclusion. The association of the word with moulds suggests that a core is the "filling" for some space intended to be left hollow. But the cones and tubes are, I think, for use as, or as parts of the weaving and knitting machinery or are "other plant" within the meaning of that term in the exclusion. The purpose of the clause appears in the main to be the exclusion from the exemption of goods capable of repeated use (cf. (*g*) (vii.), Item 91 "Containers" and *Yarmouth* v. *France* (1)). True the cones and tubes can only be used three or four times before they are worn out but so long as they can be used they form part of the apparatus used in weaving and knitting operations.

The liability of the defendant to sales tax in respect of the cones and tubes on which it wound yarn and sold to purchasers who quoted their certificates remains for consideration. It was said that the defendant was exonerated from sales tax if a purchaser quoted his certificate though without any right to do so. But I am unable to agree with this contention. The *Sales Tax Acts* and *Regulations* prescribe the cases in which a person shall or shall not quote his certificate and enact that a registered person shall

(1) (1887) 19 Q.B.D. 647, at p. 658.

not quote his certificate except as prescribed (see Regulations, Part III. and *Assessment Act* (*No.* 1) s. 12). The defendant cannot be exonerated from sales tax in respect of goods sold by him unless the purchaser lawfully quotes his certificate. It was also contended that the purchasers had lawfully quoted their certificates.

Regulation 12 (3) was relied upon:—"A registered . . . person shall quote his certificate in respect of the purchase or importation of—(*a*) goods for use by him as aids to manufacture (as defined in these Regulations)." But the cones and tubes were not for use by the purchaser as aids to manufacture or else are excluded from that expression for reasons already sufficiently appearing.

Item 132 of the scheduled exemptions was also referred to. All I need say is that conditions of this exemption have not been established. There is nothing to show that the Commissioner was satisfied that the property in the cones and tubes for use in connection with the manufacture of goods for sale would pass to the purchaser of the goods so manufactured and that the full cost of the cones and tubes would be included in the price charged by the manufacturer to that purchaser for a specific quantity of the goods manufactured. Indeed the certificate of the Deputy Commissioner cannot be right if he were satisfied.

The result is that the Commissioner of Taxation should have judgment for the amount claimed, £608 1s. 10d., together with the costs of action.

From this decision the defendant appealed to the Full Court.

P. D. Phillips K.C. (with him *Gillard*), for the appellant. The cones and tubes which we used on our own weaving and knitting machines for the purpose of producing piece goods were applied to our own use when so used and at no earlier stage. On these cones and tubes—unless they were exempt from sales tax—we should be liable for tax, under the *Sales Tax Assessment Act* (*No.* 6) in the case of those which were imported, and under the No. 4 Act in the case of those made in Australia. It is submitted, however, that they are exempt from tax as being "containers," or "aids to manufacture" (*Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1944, s. 5 and First Schedule, Items 91, 113 c; *Sales Tax Regulations* 1930-1944, reg. 4 (1)). They are within the definition of "aids to manufacture" in reg. 4 (1) (*a*); if not within that paragraph, they are certainly within reg. 4 (1) (*c*), as *Starke* J. held. His Honour was wrong in holding that they were excluded from the

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exemption by reg. 4 (1) (*h*) as "plant." "Plant" means something of a relatively permanent nature, something in the nature of a part of a machine; the word is not apt to describe these cones, which are merely put on the machine for the time being and are used up relatively soon. [He referred to *Butterworth's Words and Phrases*, vol. 4, pp. 289 et seq., *s.v.* "plant."] The cone is not a mere frame on which to keep thread conveniently; the purpose of its design makes it an "aid to manufacture." As to the cones sold with the yarn on them to purchasers who quoted their certificates, it is submitted that, even if the quotation was unlawful on the part of the purchaser, the fact of quotation was sufficient to exonerate the vendor. Otherwise the legislation would be unworkable. The general policy of the legislation is that tax is to be paid once only on goods moving from manufacture to consumption (*Deputy Federal Commissioner of Taxation (S.A.)* v. *Ellis & Clark Ltd.* (1)). The machinery of quotation is designed to produce that result, but it cannot do so unless quotation in fact is sufficient. Unless the vendor can assume that the purchaser is properly quoting his certificate, he (the vendor) cannot tell whether he is or is not liable for tax. It is no answer to say that the vendor is deemed to know the law. The validity of the quotation may depend on the intention of the person quoting. It is contrary to the policy of the common law to allow unilateral illegality to result in detriment to the innocent party. [He referred to *Whiteman* v. *Sadler* (2); *Vita Food Products Inc.* v. *Union Shipping Co. Ltd.* (2A); *Clay* v. *Yates* (3); *Apthorp* v. *Neville & Co.* (4); *Millward* v. *Littlewood* (5); *Lodge* v. *National Investment Co. Ltd.* (6); *Jones* v. *North* (7); *Pollock, Contracts*, 12th ed. (1946), pp. 346, 355, 356; *Cheshire & Fifoot* on *Contracts*, pp. 245 et seq.]

T. W. Smith K.C. (with him *D. I. Menzies*), for the respondent. It is submitted, firstly, that all the cones and tubes were applied by the appellant to its own use when the yarn was wound on them in the course of its manufacture and that they were not at that stage "aids to manufacture" so as to be exempt. The cones and tubes play no part in the actual manufacture of the yarn. The yarn may be wound direct on to a pirn; sometimes it is not wound on anything but is made up in hanks. The cones and tubes are

(1) (1934) 52 C.L.R. 85.
(2) (1910) A.C. 514.
(2a) (1939) A.C. 277, particularly at p. 293.
(3) (1856) 1 H. & N. 73, at pp. 79, 80 [156 E.R 1123, at pp. 1125, 1126].
(4) (1907) 23 T.L.R. 575.
(5) (1850) 5 Ex. 775 [155 E.R. 339].
(6) (1907) 1 Ch. 300.
(7) (1875) L.R. 19 Eq. 426.

really a kind of container, though not such a kind as to come within the exemption provided by Item 91 in the First Schedule to the *Exemptions and Classifications Act*. If this view is correct, the appellant is liable for the whole of the tax claimed (*Sales Tax Assessment Act* (*No.* 4), ss. 3-5, as to cones and tubes manufactured in Australia ; and, as to those which were imported, ss. 3-5 of the No. 6 Act). If it is not correct, the cones and tubes fall into two categories, to which different considerations apply : (1) those used by the appellant for making piece goods : (2) those sold with the yarn on them to persons who quoted their certificates. As to the second category, the respondent does not now oppose the argument of the appellant that quotation in fact is sufficient to exonerate the vendor. If it were not so, very great inconvenience would be caused to traders and also double taxation would result. Some support for the view taken by *Starke* J. that quotation means lawful quotation may be found in *Maxwell, Interpretation of Statutes*, 8th ed. (1937), p. 275 ; *In re Padstow Total Loss and Collision Assurance Association* (1) ; *Hughes* v. *Smallwood* (2) ; *Grozier* v. *Tate* (3). These authorities are cited in case they may assist the Court, but the respondent does not found any argument on them. Accordingly if the respondent's first submission is not correct, his claim must fail as to the articles in the second category. As to the first category —the cones and tubes used by the appellant on its own machines for weaving and knitting—they were admittedly applied to the appellant's own use at that stage, at all events, and therefore subject to tax unless exempt. They are clearly not at this stage " containers " of a kind exempted by Item 91 of the First Schedule to the *Exemptions and Classifications Act*, nor are they—at this stage any more than at the earlier stage—" aids to manufacture " within Item 113 c, that is, as defined in the *Sales Tax Regulations* 1930-1944, reg. 4 (1). They are not used in any processing or treatment of the yarn, and, when used in unwinding on the weaving and knitting machines, they are not within reg. 4 (1) (*a*), which refers to some preliminary operation. Likewise, as to reg. 4 (1) (*c*) : there was no such use of the cones for processing the yarn as would be embraced by this paragraph, which contemplates something entirely different from the use made of the cones ; it refers to goods, such as chemicals, which are used up in the processing which produces the finished article. Even if they are within reg. 4 (1) (*a*) or (*c*), they are excluded by reg. 4 (1) (*h*). They are covered by several of the words used in that paragraph : they are " con-

(1) (1882) 20 Ch. D. 137, at pp. 143, 146, 149.
(2) (1890) 25 Q.B.D. 306.
(3) (1946) 16 L.G.R. (N.S.W.) 57.

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tainers " of a kind not exempted by Item 91 ; they are also " cores." In any event, they are—as *Starke* J. held—" plant " within the meaning of the paragraph.

P. D. Phillips K.C., in reply.

Cur. adv. vult.

The following written judgments were delivered :—

LATHAM C.J. This is an appeal from a judgment of *Starke* J. in favour of the Commissioner of Taxation of the Commonwealth for £608 1s. 10d. for sales tax. The claim was made in respect of cones and tubes which are used in connection with the manufacture of cotton yarn and the production of knitted and woven goods. The defendant company, Davies Coop & Co. Ltd. is a manufacturer of yarn and of woven and knitted piece goods and is registered under the *Sales Tax Assessment Acts*. It sells yarn and such piece goods by wholesale. The cones and tubes in respect of which sales tax is claimed are cardboard articles upon which the fully finished yarn is wound.

The Commissioner relied upon the *Sales Tax Procedure Act* 1934-1940, s. 10, which provides for the production of a certificate that sales tax under some *Sales Tax Assessment Act* or *Acts* is due and places on a defendant sued for sales tax the onus of showing that the sales tax stated to be due in the certificate, or some portion of it, is not payable.

Some of the cones and tubes in question were purchased in Australia and the rest were imported. Upon each purchase or importation the defendant quoted its certificate and, accordingly, no sales tax became payable at that stage (see the exposition of the nature of sales tax contained in *Deputy Federal Commissioner of Taxation* (*S.A.*) v. *Ellis & Clark Ltd.* (1)). The Commissioner contended that the defendant applied the whole of the cones and tubes to its own use or, alternatively, applied some of them to its own use and sold the remainder. If the goods were applied to the defendant's own use, then sales tax would be payable under one or other of *Sales Tax Assessment Acts* Nos. 2, 4, 6 or 8, unless the goods fell within any of the exemptions specified in the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1944. The Commissioner alleged that, as to the goods sold, they were sold either to registered persons who did not quote their certificates, or to such persons who quoted their certificates but were not entitled so to do. The evidence showed that all the sales were made to persons who did

(1) (1934) 52 C.L.R. 85.

in fact quote their certificates. The question whether they rightly quoted their certificates depends upon whether the goods were exempt from sales tax or not. The learned trial judge held that the purchasers of the goods from the defendants wrongly quoted their certificates and that the dispensation from liability for tax dependant upon quotation of a certificate was conditional upon quotation being lawfully made. The result was that the defendant was in the position of selling goods by wholesale to persons who did not quote their certificates. Upon such sales sales tax would be chargeable.

No contest arises as to the amount of sales tax payable if the defendant is liable at all. The defendant company admits that it applied some of the goods to its own use, and sold others to persons who in fact quoted their certificates. It contends, however, that the goods were exempt from sales tax because, first, they were containers as defined in the *Sales Tax (Exemptions and Classifications) Act*, First Schedule, Division XIII., Item 91 (1), and, secondly, because they were " aids to manufacture " as defined in Item 113c of the said schedule and *Sales Tax reg.* 4, and so were exempt from sales tax. The defendant further pleaded in respect of the goods sold that the purchasers in fact quoted their certificates and that for this reason sales tax upon the sales value of the goods was not payable by the defendant. Finally, it was contended that the quotation of their certificates by the purchasers was in accordance with law because the goods were exempt.

The evidence showed that the defendant manufactured cotton yarn, and that when the yarn was reduced to a thickness suitable for weaving and knitting it was wound upon a cardboard cone or a tube in a regular manner according to a pattern, so that when the yarn was used for purposes of knitting or weaving or for any other purpose it could be unwound evenly and at a regular tension. Some of the yarn was made up into hanks or was wound on pirns for use in knitting or weaving and so became ready for marketing without being wound upon cones or tubes. It is unnecessary in this case to consider yarn which was used or disposed of without the use of cones and tubes. The evidence showed that the cones and tubes became distorted with use and could only be used about three or four times. When yarn wound on cones or tubes was sold, separate prices were charged for the yarn and for the cones and tubes.

The yarn wound on cones and tubes which was not sold was used by the defendant in knitting and weaving operations. The cones and tubes carrying the yarn could be used only for some such

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purpose. They were used and used up by the defendant in a manufacturing operation and, as the learned judge found, they were applied to the use of the defendant. Accordingly, sales tax was payable upon them by the defendants under Acts Nos. 4, 6 or 8, unless they were exempt, as contended by the defendant.

As to the cones and tubes upon which yarn was wound which were sold by the defendant, his Honour held that they had not been applied to the use of the defendant, but had only been prepared for use by another manufacturer, namely the purchaser, who intended to use them in weaving or knitting, which involved unwinding the yarn from them.

The *Sales Tax (Exemptions and Classifications) Act* 1935-1944, s. 5, provides for the exemption of certain goods from sales tax. One of the exemptions is to be found in Item 113c in the First Schedule, which is as follows :—" Goods applied by a registered person to his own use as—(*a*) aids to manufacture ; or (*b*) in the processing or treatment of goods to be used by him as aids to manufacture or in the cleansing or sterilizing of bottles, vats or other containers for use in the storage of goods to be used by him as aids to manufacture. For the purposes of this item, ' aids to manufacture ' means aids to manufacture as defined by Regulations made under the *Sales Tax Assessment Acts*." Regulation 4 of the *Sales Tax Regulations* defines " aids to manufacture " (so far as relevant) in the following way :—" ' Aids to manufacture ' means goods for use by a registered person—(*a*) in the actual processing or treatment of goods to be used in, wrought into or attached to goods to be manufactured ; (*b*) in any processing or treatment by which goods to which that processing or treatment is applied are used in, wrought into or attached to goods to be manufactured ; (*c*) in any processing or treatment for the purpose of bringing goods into, or maintaining goods in, the form or condition, in which they are marketed or used by the manufacturer thereof . . . but does not include—(*h*) goods " (with certain exceptions) " for use as, or as parts of, machinery . . . containers (including goods of the classes and for the uses included in or specifically excluded from item 91 in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1943) and other plant."

The phrase " goods to be used in, wrought into or attached to goods to be manufactured " is defined by reg. 4 to mean " goods to be so used or dealt with that those goods, or some essential element thereof, will form an integral part of the goods to be manufactured, and will remain in those goods as an element essential to the goods in their completely manufactured condition,

but does not include goods to be so used that those goods, or some element thereof, will, or may, remain adventitiously in the goods to be manufactured, if the goods to be so used are intended to be used primarily as aids in the manufacturing process." The learned trial judge held that the cones and tubes applied by the defendant to its own use were not aids to manufacture within the meaning of clause (*a*) above-quoted, because they were not used in any actual processing or treatment of the yarn, but he held that they were aids to manufacture within clause (*c*), because the weaving or knitting operations in which the cones and tubes were used was a processing or treatment. But his Honour was of opinion that the cones and tubes were part of the weaving and knitting machinery and, accordingly, were " other plant " within the meaning of par. (*h*), which excludes " other plant " from the exemption. Accordingly, his Honour gave judgment for the plaintiff for the whole of the claim made.

All the purchasers from the defendant in fact quoted their certificates when they bought the goods. Sales tax is not payable upon a sale to a registered person who quotes his certificate, because in such a case there is no sales value for the purpose of the Acts : see, for example, Act No. 2, s. 4 (1). Both the appellant and the respondent contended that the provisions of the Act referring to quotation of certificate meant quotation in fact of certificates, whether rightful or wrongful. If a quotation is wrongfully made there is a penalty of £100 : *Sales Tax Assessment Act* (*No.* 1) 1930-1942, s. 12 (2). This provision deals with cases where there is a quotation in fact, but it is unlawful.

Tax is imposed in relation to the sales value of goods. Sales value in, for example, Act No. 2 (see s. 4) is the amount specified in the section where goods are sold by certain persons " to an unregistered person or to a registered person who has not quoted his certificate in respect of that purchase." The other relevant Acts contain a corresponding provision. If goods are sold to a person who is in fact unregistered, it would, in my opinion, be immaterial for the purpose of applying this provision that the person ought to have been registered. So if goods are sold to a person who is registered in fact and who has not quoted his certificate (though perhaps he ought to have quoted it), the conditions specified in the section are equally satisfied and tax is payable. Registration or non-registration is a matter of fact, and quotation or non-quotation is, in my opinion, equally a matter of fact, whether or not a registration in one case or a quotation in the other has rightly been made.

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In order to determine whether such a provision as that last cited refers to actual quotations by persons actually registered, or only to quotations lawfully made under the Acts and regulations, it is relevant to consider the provisions of the appropriate Act as a whole. The words " who has quoted his certificate " in themselves are sufficiently wide to cover any actual quotation of a certificate, whether the quotation be right or wrong. There is no reason to be found in any of the Acts taken as a whole for limiting them to cases of lawful quotation. If such a limitation were introduced it would be very difficult to apply the Acts and to carry on business under the Acts. If quotation of certificates is accepted as meaning quotation in fact, then a person who disposes of goods to a registered person who quotes his certificate knows that no tax is payable by him and he need not provide for it in his price. If, however, a vendor is unable to act upon the fact of quotation and in order to avoid tax must be in a position to establish, not only the fact of quotation, but also that the quotation was rightly made, then, as the purchaser from him would be under no obligation to answer any inquiries, the vendor could never be certain whether or not he would be liable to tax. Further, if the quotation of certificates referred to in the Act means only lawful quotation of certificates, then in a case where it was held that there had been a quotation which was not lawful and, accordingly, a seller of the goods was sued for sales tax, he would have to pay the tax, and another tax might be payable at a later stage in the disposition of the goods. The result would be a double tax. The Act in no case is intended to bring about this result: see *Deputy Federal Commissioner of Taxation (S.A.)* v. *Ellis & Clark Ltd.* (1). Thus I am of opinion that actual quotation and not necessarily lawful quotation is the quotation referred to in s. 4 of the Act last mentioned and in the corresponding provisions of the other *Sales Tax Assessment Acts*. I am therefore of opinion that in the case of all the goods sold by the defendant to registered persons who in fact quoted their certificates, no sales value of the goods was prescribed by any of the Acts, and that therefore no sales tax is payable in respect of them.

This leaves for consideration the subject of the cones and tubes which were not sold with the yarn upon them to other persons but were used by the defendant company itself—first, for the purpose of winding yarn upon them, and then for the purpose of unwinding the yarn in the process of producing woven and knitted piece goods. The goods were applied by the defendant, a registered person, to its own use for the purpose of manufacturing woven and

(1) (1934) 52 C.L.R., at p. 92.

knitted goods. The defendant contended that par. (*a*) of the definition of " aids to manufacture " applied to the cones and tubes which the defendant so used. In my opinion the facts do not support this contention, because the cones and tubes were not" used in, wrought into or attached to goods to be manufactured " within the meaning of the definition of that phrase. They did not form an integral part of the goods (i.e., the woven or knitted piece goods), remaining in them as an element essential to the goods in their completely manufactured condition.

I agree with the learned trial judge that they fell within par. (*c*) of the definition of " aids to manufacture " in that they were goods for use by a registered person in a processing or treatment for the purpose of bringing goods manufactured by that person into a form or condition in which they were marketed. It was argued that the use of goods in processing or treatment within the meaning of this clause meant the use of goods in such a way that they disappeared into the finished product; as, for example, where a chemical substance was used for producing a particular change in a substance or substances, but was not itself part of a substance in its final form. The suggestion is that " processing or treatment " means manufacturing activities involving the use of material which disappears and cannot be discovered in the final product. There is no satisfactory reason for limiting the words to chemical processes or to processes like cleaning or polishing. A mere mixture of substances or a mechanical arrangement of substances may be a necessary part of a process in order to produce a marketable product. It would be useless to produce yarn in a tangled mass. It is useful only if it can be used readily and speedily by being unwound from a carrier upon which it is held. Thus the use of the cones and tubes is necessary in the case of the yarn which is wound upon them to make it possible to use the yarn for the knitting and weaving purposes for which the defendant in fact used it. This use was part of the process of bringing the ultimate product, namely the piece goods, into a form or condition in which they could be marketed. Accordingly, in my opinion, the cones and tubes are included within par. (*c*) of the definition of " aids to manufacture."

It is now necessary to consider whether the cones and tubes are " other plant " so as to be excluded from the exemption given to " aids to manufacture." In my opinion these cardboard articles, which can only be used some three or four times, cannot properly be described as part of the plant of a factory. When yarn wound on cones or tubes was sold, it would not be accurate, in my opinion, to say that the defendant company was selling part of its plant.

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The cones and tubes correspond rather to cotton reels which are sold with the cotton upon them. No-one would describe such reels as part of the plant of the factory. The cotton could not be used for most purposes unless it was " manufactured " on to the reels in such a way that it would come off readily when used on some form of sewing machine. The cones and tubes are in my opinion of substantially the same character. I am therefore of opinion that they are not excluded from the exemption by reason of the exclusion of " other plant."

Accordingly, in my opinion, as to the cones and tubes retained and used up by the defendant, no sales tax is payable as they come within the exemption contained in par. (*c*) of the definition of " aids to manufacture," and as to the cones and tubes sold with yarn wound upon them, no tax is payable because all the sales were made to registered persons who in fact quoted their certificates.

The appeal should be allowed with costs, the judgment for the plaintiff set aside, and in lieu thereof judgment should be entered for the defendant with costs.

RICH J. This case arises from the administration of the sales tax legislation and regulations. Difficulties and complications are doubtless inseparable from the levying of sales tax upon the sale or disposition of commodities. But I cannot help feeling that the complications through which we have had to find our way are at best in part adventitious. Having threaded my way along the course plotted by my brother *Starke*, I find myself in agreement with him except at two points.

In the first place I do not think that the legislation intends that an erroneous quotation of a certificate by a buyer should be a nullity. True, it is that an unlawful act in a transaction between parties is not as a rule productive of the same consequences as in the same acts done lawfully. But the purpose of this legislation is to enable a seller of goods when he sells them to a buyer who is registered and quotes his certificate to sell them without incorporating in the price the sales tax. The idea of the certificate is to place responsibility on the registered person who quotes it and set the seller free from apprehension concerning the tax. The second matter upon which I am not in agreement with my brother *Starke* is whether the cones and tubes upon which the cotton yarn is wound are plant of the taxpayer. The expression " other plant " occurs in par. (*h*) of clause 4 (1) of the definition of aids to manufacture. I do not think that the words can be safely relied upon to introduce from the miscellaneous assortment of things which precede it a

wide application to the word " plant." I would give it its ordinary meaning. That meaning involves the notion of machinery, apparatus, appliances or things of an enduring character used in the manufacture or production of goods or in some other operations. I hardly think that articles can be plant unless they are capable of repeated use in production or manufacture of other things or in working operations. The cones and tubes can be used only two or three times at most, and if the cotton yarn is sold they are sold with the cotton yarn. They do not form any part of the enduring apparatus of manufacture.

For these reasons I would allow the appeal and enter judgment for the defendant.

DIXON J. In this appeal the question is whether the Commissioner of Taxation has been rightly held entitled to sales tax in respect of articles used in cotton spinning. They are cardboard cones or tubes upon which finished cotton yarn is wound from the ring bobbin whence the yarn is drawn from the spinning machines. A cone of yarn, or in the case of a tube, a " cheese " of yarn is thus formed. In that shape the yarn is dealt with by sale or put to use in weaving or knitting. In a weaving shed the cones or cheeses, if the yarn is to be used for warping, are placed in a creel and the threads drawn off to the beam. If the yarn is for the shuttle, it is wound on to the pirn of the shuttle from the cone or tube. For knitting the cones or tubes are placed in a creel whence the threads are drawn off into the knitting needles. A cardboard cone or tube may be used again for winding yarns but after two or three windings it is useless and is discarded.

The defendants, appellants, from whom the sales tax is claimed, are manufacturers of yarn and also of piece goods. In acquiring the cardboard cones and tubes, whether from those who manufacture them here or by importation, the defendants quoted their certificate. The cones and tubes, therefore, did not bear sales tax at that point. The cones and tubes were used by the defendants in the process of manufacturing yarn, that is for winding the yarn. Some of the cones and cheeses of yarn so produced were sold to other manufacturers of cotton piece goods. In such sales the price of the yarn and of the cardboard cones and tubes on which it was wound was expressed or shown separately, the cost of the cones and tubes being about 6d. a lb. The manufacturers who bought in this way, quoted their certificates, that is both in respect of the cones and tubes and in respect of the yarn. At that point also the tubes and cones bore no sales tax. But some of the cones and cheeses of yarn

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which the defendants produced went to their own weaving looms or knitting machines and produced piece goods.

The Commissioner's claim is based primarily upon the view that when the defendants wound the yarn upon the cones and tubes they applied them to their own use. If that were so, and the cones and tubes came under no exemption, the defendants would be liable to sales tax upon the sale value of the goods, in the case of cones and tubes manufactured in Australia, under s. 3 and s. 4 of the *Sales Tax Assessment Act* (*No.* 4) and, in the case of cones and tubes imported, under ss. 3, 4 and 5 of the *Sales Tax Assessment Act* (*No.* 6). But the Commissioner bases his claim on an alternative. It is that when the cones and cheeses of yarn which the defendants used in the manufacture of piece goods were placed in the creels and the threads drawn off, at that stage the defendants applied those cones and tubes to their own use. As to the rest which were sold, he says that sales tax should have been paid upon them. The buyers ought not to have quoted their certificates, because they bought them to use in the same way in the manufacture of woven or knitted piece goods.

According to this contention, the quotation of the certificate was unlawful and it should be treated as a nullity, with the consequence that the defendants are responsible for sales tax just as if they had sold the cones and tubes to buyers who did not quote their certificates.

I cannot agree that this view is based on a sound interpretation of the sales tax legislation. In *Deputy Federal Commissioner of Taxation* (*S.A.*) v. *Ellis & Clark Ltd.* (1) I attempted to explain the principles and the operation of that legislation and I shall not renew the attempt. But the basal conception upon which the system of quoting certificates proceeds is that the responsibility shall be placed upon the buyer of correctly using the authority, which comes from registration, of quoting his certificate, so that the seller may sell at a price which in the event of quotation does not, and in the event of no quotation does, include sales tax. It is a penal responsibility. But if the buyer improperly quotes his certificate he obtains the goods from the seller at a price that does not include sales tax. The assumption when a certificate is quoted is that at a later stage in their course from production to consumption the goods, unless exempt, will bear sales tax. It is intended that the seller, if bona fide, may act upon the quotation of the certificate and sell without providing in his price for sales tax. When it turns out that the buyer ought not to have quoted

(1) (1934) 52 C.L.R. 85.

his certificate, it is his responsibility. It was not intended that the seller who had not provided in his price for the tax, should then pay it. When s. 4 (1) of the *Sales Tax Assessment Acts* (*No.* 2) and (*No.* 6) speaks of a registered person who has not quoted his certificate in respect of the purchase of the goods, the reference is to quotation in fact. The purpose and policy of the legislation is inconsistent with any application of the theory that an unlawful or improper quotation must be treated as no quotation of the certificate.

Returning to the primary case of the Commissioner, namely, that to wind yarn upon cones or tubes means that the manufacturer thereby applies them to his own use, I shall say little about it. For I find it unnecessary to pronounce upon the question it raises. The cones and tubes stand in a peculiar position with respect to the use made of them at this point. For they may or may not be sold as a result of the use. There is something to be said for the view that, when the sales tax legislation makes sale and application of goods to the taxpayer's own use two occasions of liability for tax, it is really making a distinction which corresponds to that between the distribution and consumption of goods. But I find that it is unnecessary to pursue the question because I have reached the conclusion that the cones and tubes are exempt from sales tax. Under the *Sales Tax Regulations*, clause 12 (3) (*a*), a registered person must quote his certificate in respect of the purchase or importation of goods for use by him as aids to manufacture as defined in the regulations. No doubt the defendants when they purchased or imported the cones and tubes acted upon this clause and that is why the goods bore no sales tax when the defendants acquired them. The period of time with which the case is concerned extends from June 1937 to July 1944 and it precedes the passing of the *Sales Tax* (*Exemptions and Classifications*) *Act* 1945 which contains a new definition of " aids to manufacture " for the purposes of certain exemptions. But the preceding legislation, which consists in the *Sales Tax* (*Exemptions and Classifications*) *Act* 1935-1944 contains a relevant exemption of aids to manufacture which depends on the definition in the regulations, as for that matter does the corresponding exempt item of the 1945 Act. The item in question is 113c. It provides that goods applied by a registered person to his own use as aids to manufacture shall be exempt, and it refers to the definition of the expression in the regulations. That definition, which appears in clause 4 (1), contains seven paragraphs stating what the expression covers, and one stating what it does not include.

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Of the seven affirmative paragraphs two are relevant. Of the descriptions of things mentioned in the exclusory paragraph two are relied upon. One is "plant" and the other "containers." The first of the two relevant affirmative paragraphs is curious in that it uses a phrase which is itself the subject of another elaborate definition, contained in the same clause of the regulations, viz., clause 4 (1). The phrase is "goods to be used in, wrought into or attached to goods to be manufactured." It is necessary to remember in applying the paragraph that these words are not to be understood according to their natural sense but are to be treated as symbols referring to a much more complicated set of ideas explained in the definition of the phrase.

The two material paragraphs are these :—"Aids to manufacture" means goods for use by a registered person (*a*) in the actual processing or treatment of goods to be used in, wrought into or attached to goods to be manufactured ; (*c*) in any processing or treatment for the purpose of bringing goods into, or maintaining goods in, the form or condition, in which they are marketed or used by the manufacturer thereof. The goods first mentioned are the exempt goods. They must be used by the registered person, here a manufacturer. It is under this category the cones and tubes fall. The goods next mentioned are those which are the subject of processing or treatment. Under this category the yarn must fall. But in par. (*a*) the properties or characteristics which the latter category must have are set out in the definition of the phrase. I shall not set out the whole of that definition but I shall pick out the material words. To come within it the yarn must "be so used or dealt with that those goods" (the yarn) "will form an integral part of the goods to be manufactured" (the cotton piece goods) "and will remain in those goods as an element essential to the goods in their completely manufactured condition." Then follow some words of exclusion with which I need not deal, because I think that they will be seen to be clearly inapplicable if it is held steadily in view that they are referring to the goods serving the purpose the yarn serves and not the purpose the cones and tubes serve.

The definition is confusing but by inserting the words "yarn" and "cotton piece goods" I hope I have made clear how to my mind it works out. I see no reason why it should not apply to the yarn on the cones and tubes. It is true that the yarn forms or may form the whole of the woven or knitted fabric and that the definition might seem rather to speak of an element contributing to the whole result. But the words do not require such a distinction and

I feel sure that it was not intended. What goes into a manufactured article and forms part of its substance is sold as part of it so to speak, and then bears sales tax in its manufactured form and for the first time. The phrase is defined so as to cover such things. The purpose is seen when the phrase is taken up into the paragraphs of the definition of "aids to manufacture." The purpose is to secure the result, to take par. (*a*), that whatever is used in processing or treating such goods will qualify as an aid to manufacture. The question then is whether the cones and tubes may properly be said to be used in the actual processing or treatment of the yarn. On the whole I think that the winding upon the cone or tube of the yarn from the ring bobbin should be considered as part of the processing or treatment of the yarn. It is part of the method of taking the yarn from the machines and of putting it into a final condition for handling and use. But in addition I agree with the learned judge from whom the appeal comes, *Starke* J., that par. (*c*) applies. The winding upon the cone or tube is part of the processing or treatment of the yarn and its purpose is to give the goods, that is the yarn, a form or shape in which the yarn may be marketed, and also one in which it may be used in the creels of a manufacturer of knitted or woven piece goods.

Unless the cones and tubes fall within the exclusory par. (*h*) of the definition of the expression I am of opinion that they are aids to manufacture. They fall under both pars. (*a*) and (*c*) of the definition.

The first exclusion to be considered is expressed in the words, "goods . . . for use as . . . containers (including goods of the classes and for the uses included in or specifically excluded from item 91 in the first schedule of the *Sales Tax* (*Exemptions and Classifications*) *Act*)." I shall not set out item 91 in full. But its points, in relation to cones and tubes, are that it refers (1) to inner as well as outer coverings, (2) to inside linings and inside packing materials, and (3) to goods used to secure other goods for delivery, similar to paper bags, wrapping paper, string, lashing, and adhesive strips. As to (1), it appears to me that this relates to an inner covering in the sense, not that it is inside the goods to be covered, but that it is within an outer covering. As to (2), I think that "inside" probably means inside some other covering and not the goods; but be that as it may, the cones and tubes are not linings or packing materials. As to (3), the cones and tubes have no sufficient similarity to the things enumerated; and, moreover, their purpose goes much further than "securing" the yarn. They are

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not " containers " according to the artificial meaning or to any proper meaning of the word. They sustain the yarn but they do not contain it.

But the second category of exclusion has more plausibility. So much as is relied upon consists in the words " goods for use as or as parts of machinery, implements tools . . . moulds cores . . . containers and other plant." " Cores " they are not. But *Starke* J. considered that they came within the words " other plant." His Honour said " I reject the idea that the cones and tubes are cores within the meaning of this exclusion. The association of the word with moulds suggests that a core is the ' filling ' for some space intended to be left hollow. But the cones and tubes are, I think, for use as, or as parts of, the weaving and knitting machinery or are ' other plant ' within the meaning of that term in the exclusion. The purpose of the clause appears in the main to be the exclusion from the exemption of goods capable of repeated use (cf. (*g*) (vii) Item 91 ' Containers ' and *Yarmouth* v. *France* (1)). True the cones and tubes can only be used three or four times before they are worn out but so long as they can be used they form part of the apparatus used in weaving and knitting operations."

With respect I am unable to agree with this view.

I admit that the word " containers " will suggest a very wide or extensive application of the word " plant " if the word " other " is taken to mean that all that precedes is " plant." But I have not set out the full list of things included and photographic films and plates and cinematographic films form part of the list. It is difficult, I think, with such a miscellaneous catalogue to attach much significance to the word " other." It is difficult to believe that all that is in the list was considered " plant." There are two reasons why the word " plant " is inappropriate to the cones and tubes. One is that they are consumed in use if not sold and represent consumable stores or supplies rather than plant. The other reason is that they form part of the article sold. They provide the mounting of the cone of yarn or the cheese of yarn and must be sold with it.

In my opinion the cones and tubes are not plant but do constitute aids to manufacture.

I think they are exempt under item 113c.

It follows that the appeal should be allowed with costs and judgment should be entered for the defendants with costs.

(1) (1887) 19 Q.B.D. 647, at p. 658.

McTIERNAN J. I am of the opinion that the appeal should be allowed.

I agree with the reasons of the Chief Justice.

WILLIAMS J. The nature of the appeal has been fully stated in the reasons for judgment of the Chief Justice and *Dixon* J. I agree with them that the appeal should be allowed, and only desire briefly to indicate my reasons for coming to this conclusion.

I accept the submission of the respondent that the appellant applied the cones and tubes to its own use when it first wound the yarn upon them so that the goods thereupon became liable to sales tax under Acts 4, 6, and 8 unless they were exempt goods. But goods applied by a registered person to his own use as aids to manufacture are made exempt from sales tax under these Acts by item 113c of the schedule to the *Sales Tax (Exemptions and Classifications) Act* 1935-1944. The meaning of aids to manufacture must be ascertained by reference to reg. 4 of the *Sales Tax Regulations*. *Starke* J. held and I agree with him that, apart from the possibility of their being plant, the cones and tubes were aids to manufacture within the meaning of reg. 4 (1) (*c*) and were not cones within the meaning of reg. 4 (1) (*h*). It is therefore unnecessary to decide whether they were also aids to manufacture within the meaning of reg. 4 (1) (*a*).

But I cannot agree with him that the goods lost the exemption which they would otherwise have derived from reg. 4 (1) (*c*) because they were " other plant " within the meaning of reg. 4 (1) (*h*). The word " plant " must be given its ordinary natural grammatical meaning, and that meaning connotes to my mind articles which are permanently used for the purposes of the trade and form part of the permanent establishment. The cones and tubes were made of flimsy cardboard material and could only be used three or four times. Such goods could not be said to form part of the permanent establishment. Further when the yarn is sold, it is sold wound upon the cones and tubes as one vendible article, and articles which are sold are part of the stock in trade and not part of the plant of an establishment.

On this view the question whether a certificate is only quoted within the meaning of the sales tax legislation when it is quoted lawfully does not strictly arise. But as the question is of general importance, I shall take leave to add that I do not agree with *Starke* J. that a vendor who sells to a purchaser who quotes his certificate is not exempted from sales tax unless the quotation is awful. In my opinion the purpose and policy of the sales tax

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legislation, particularly with respect to the avoidance of double taxation, indicates an intention that the vendor, if bona fide, may rely upon the actual quotation of a certificate by the purchaser as a proper quotation whether the quotation is one authorized by the legislation or not.

For these reasons I would allow the appeal.

Appeal allowed with costs. Judgment set aside and in lieu thereof judgment for defendant with costs.

Solicitors for the appellant: *Oswald Burt & Co.*

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

E. F. H.