

210-5041 p1
ORIGINAL

IN THE HIGH COURT OF AUSTRALIA

DEPUTY COMMISSIONER OF TAXATION
OF THE COMMONWEALTH OF AUSTRALIA

V.

ACADEMY PLASTICS PROPRIETARY
LIMITED

REASONS FOR JUDGMENT

Judgment delivered at Sydney
on Monday, 26th March 1956.

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DEPUTY COMMISSIONER OF TAXATION
OF THE COMMONWEALTH OF AUSTRALIA

v.

ACADEMY PLASTICS PROPRIETARY LIMITED

JUDGMENT

KITTO J.

This is an action by a Deputy Commissioner of Taxation against a manufacturer for the recovery of sales tax upon certain goods admittedly manufactured and sold in Australia by the defendant during the month of September 1952. It is common ground that the defendant was a registered person within the meaning of the Sales Tax Assessment Acts, the Sales Tax Procedure Acts and the Sales Tax Acts which were in force at the relevant time, and that none of the persons to whom the goods were sold was such a registered person. The arithmetical correctness of the amount sued for, which is £2.2.6, is admitted. The only question for decision by the Court is whether the goods were exempt from sales tax as falling within one or more of the items in the First Schedule to the Sales Tax (Exemptions and Classifications) Act 1935-1952 (Commonwealth).

The goods in question are plastic articles, each branded "Tidy Towel Rack", which are intended to be used in pairs for the purpose of suspending towels in an extended position. Each article is constructed so as to be secured by means of two screws against a wall or other vertical surface. It presents to that surface a face which is roughly an inch and a half square. The face plate is about a quarter of an inch thick. From it, and at right angles to it, there projects horizontally, for a little over four inches, an arm an inch and a half in height and less than half an inch in thickness. From the lower edge of the arm three incisions lead upwards to within half an inch of the upper edge. The incisions are a quarter of an inch in breadth and are

three-quarters of an inch apart. Into each incision there projects, from a recess let into the arm on the wall side of the incision, a small cylindrical bar, hinged at its concealed end but free at its exposed end. It lies at a slight upward angle, so that the lower edge of its free end falls against the further wall of the incision. The effect is that if the edge of a towel is pushed up into the incision the bar makes way for it in its upward course, but as soon as it is subjected to a downward pull it is wedged between the end of the bar and the wall of the incision and thus is securely held. When two of these articles are used so that the towel-edge is held at two points in a horizontal line, the towel may be extracted by taking hold of it at an intermediate point and pulling it upwards. It will be seen that the movement of the towel, whether it is being inserted or extracted, is in the only direction which is allowed by the interaction of the small bars and the opposite walls of the incisions.

The defendant contends that the article falls within items 84(2) and 90D of the Schedule. Item 84(2) is "Builders' hardware (not including electrical fittings accessories or equipment), being goods of a kind used in the construction or repair of, and wrought into or attached to so as to form part of, buildings or other fixtures, including - Bolts, brackets, brads... ..." and a considerable list, in alphabetical order, of other goods amongst which appear "hooks". Item 90D, so far as it need be quoted, is "Household fittings and sanitary ware (and parts therefor, including chains, plugs and washers) of a kind installed in houses or other buildings so as to become fixtures therein, viz.:- (1) ... towel rails and towel rail holders ...".

The latter item should, I think, be put aside at once. The "viz." which introduces the list of particularly described goods makes the list an exhaustive statement of the category covered by the item. It is not suggested that the Tidy Towel Rack can be fitted into the list under any other head than towel rails and towel rail holders. Quite obviously, however, it is not a towel rail, or a towel rail holder, or a combination of a towel

rail (or rails) and a towel rail holder. There is no context to give the expression "towel rail" a meaning more extensive than that of a strip of material such as metal, wood or glass, over which a towel may be hung; and a towel rail holder is, of course, an article made to extend from a wall or other surface so as to clasp a towel rail and maintain it in the position which its function requires. Accordingly, even if the Tidy Towel Rack is, as the defendant maintains, of the general description with which item 90D begins, it is clearly excluded from the item by the fact that it is not within any of the particular classes of goods to which the item is by its terms confined.

I turn to item 84(2). Here, the alphabetical list of goods which the general description is to be taken to include is not exhaustive. Counsel for the defendant relies upon the list for two purposes. First, he points to the word "brackets" and the word "hooks" as possibly wide enough to cover the Tidy Towel Rack by their own force. I think, however, that it would be a clear misuse of the word "hook" to apply it to this article; and so far as the word "bracket" is concerned it seems to me hardly less obviously inapplicable, because in the context of item 84(2) the word must refer only to the well-known type of angular article commonly called a bracket by persons in or concerned with the building trade, and the Tidy Towel Rack is clearly to be excluded from that category, both on the evidence and on the basis of general knowledge. Secondly it is said that the specific inclusion of goods such as brackets and hooks gives an indication which assists the construction of the main portion of the item and tends to show that the Tidy Towel Rack falls within the general words of description. No doubt in some cases the alphabetical list of goods may be helpful as illustrating the meaning of the more general words, but I do not find it of any assistance on the question to be decided in this case.

Turning to the general words themselves, even if the words "Builders' hardware" were the only words to be considered, I should be of opinion on the evidence that the Tidy Towel Rack

was not within the class of goods so described. Seven witnesses of long experience in the hardware and building trades concurred in rejecting the notion that the article was builders' hardware as they understood the term and as it is understood in those trades. No evidence to the contrary was offered. The witnesses differed somewhat in the reasons they gave for thinking the term inapplicable to the Tidy Towel Rack, but it may be said that in substance their view was that the article was not one in which builders, or architects in preparing specifications for builders, would be interested, and that such demand for it as there might be would come from householders interested in adopting gadgets as kitchen accessories in the course of enjoying, rather than building, their houses.

But whatever meaning might be given to the expression "Builders' hardware" standing by itself, in item 84(2) it is confined to "goods of a kind used in the construction or repair of, and wrought into or attached to so as to form part of, buildings or other fixtures". Obviously these words cannot properly be applied to every article which is intended to be affixed to the fabric of a building so as to be held in a position which is suitable for its convenient use. The Tidy Towel Rack, it may be remarked, is not even of that wide description, for the support it requires may be as well provided by the end of a detached piece of furniture, such as a kitchen cabinet, as by a wall. Even if I had no assistance from evidence, I should think it sufficiently clear from an inspection of the article itself that it is not of a kind used in the construction or repair of a building. No one would ever think of such a thing, I am sure, except after the building was completed, and as a matter rather of furnishing and equipping the household than of adding to the building as a building. It is almost unnecessary to say that even where the Tidy Towel Rack is screwed to a wall (and, as I have said, it need not be), it is certainly not "wrought into" the building. Finally, there is no justification for saying that

when the Tidy Towel Rack is screwed to a wall of a building it forms part of the building. The degree, manner and object of the attachment are not such that there can properly be said to be an integration of the Rack with the building. The building supports the Rack, it is true, but the attachment is slight, easily terminated, and irrelevant to any function of the fabric.

I am clearly of opinion that neither of the items of exemption upon which the defendant relies has any application in this case.

There must be judgment for the plaintiff for £2.2.6. The purpose of the litigation is to obtain a decision applicable to all sales of Tidy Towel Racks, and therefore, notwithstanding the smallness of the amount directly involved, it is right that the defendant, having failed, should pay the costs.