HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA	APPELLANT;	1961 *Oct. 19 Dec. 15
AND		
WESTCOAST TRANSMISSION COMPANY LIMITED (CANADIAN BECHTEL LIMITED AGENT)	RESPONDENT.	

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Taxes—Steel pipe purchased abroad brought into Province—Terminal charges assessed as part of delivered price—Assessments not authorized—Social Services Tax Act, R.S.B.C. 1948, c. 333, s. 3(3), as amended.

*PRESENT: Kerwin C.J. and Locke, Cartwright, Martland and Judson JJ.

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The respondent company purchased a quantity of steel pipe from an English manufacturer for delivery in Vancouver. Each shipload was paid for by the respondent and the bill of lading relating thereto was delivered to the respondent, or its agents, while such shipment was at sea en route to Vancouver. Terminal or harbour charges were paid by the respondent in the course of taking delivery of each shipment. The Commissioner, Social Services Tax, assessed a tax of 5 per centum on these charges on the basis that the money paid therefor was part of the delivered price of the steel. The respondent appealed the assessments and, when subsequently the assessments were affirmed by the Minister of Finance, the respondent appealed to a Judge of the Supreme Court of British Columbia. The appeal was successful and the assessments were set aside. This decision was affirmed unanimously by the Court of Appeal. The Crown then appealed to this Court.

Held: The appeal should be dismissed.

The words "the same tax" in subs. (3) of s. 3 of the *Social Services Tax Act,* R.S.B.C. 1948, c. 333, as amended, do not mean "the same amount of tax" as would have had to be paid in respect of a notional retail purchase of the steel pipe in British Columbia. They mean that, in the circumstances outlined in subs. (3), the tax which applies on retail purchases in the Province also applies on the consumption or use of property brought into the Province. That tax is a tax of 5 per centum of its purchase price. The goods, which in view of the nature of the contract for the purchase of the steel pipe became the property of the respondent while they were on the high seas, became subject to tax as soon as they entered the Province.

The terminal charges were not a part of the purchase price, either within the general meaning of that term or within the definition contained in the Act. They were charges paid, not by the vendor, but by the purchaser, after property in the goods had passed to it, after the goods had been brought into the Province and after the tax attached and became payable.

APPEAL from a judgment of the Court of Appeal for British Columbia[1], affirming a judgment of Ruttan J. Appeal dismissed.

W. G. Burke-Robertson, Q.C., for the appellant.

J. G. Alley, for the respondent.

The judgment of the Court was delivered by

MARTLAND J.:—This case has been argued on an agreed set of facts, which are as follows:

The respondent purchased 96,000 tons of three-inch steel pipe from South Durham Steel & Iron Co. Ltd., Stockton-on-Tees, County Durham, England, for delivery to the respondent in Vancouver. The agreement to purchase is contained in a letter from the respondent to the vendor dated October 12, 1955, as amended by a letter from the

[1] (1961), 35 W.W.R. 70, 28 D.L.R. (2d) 518.

respondent to the vendor dated May 21, 1956. By endorsement dated May 24, 1956, the purchase terms were accepted by the vendor.

The contract price of the said steel pipe is described in the said letter of May 21, 1956, as:

> The contract price delivered C.I.F. Vancouver, B.C., but not including any dues, Import Duty, Sales Tax, Landing or other charges, but including ocean insurance as outlined herein, is $160.14 U.S. dollars per ton of 2,000 lbs., for 90,000 tons.
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> The contract price delivered C.I.F. Vancouver, B.C., but not including any dues, Import Duty, Sales Tax, Landing or other charges, but including ocean insurance as outlined herein, is $161.75 U.S. dollars per ton of 2,000 lbs., for 6,000 tons.

Each shipload of pipe was paid for by the respondent and the bill of lading relating thereto was delivered to the respondent, or its agents, while such shipment was at sea en route to Vancouver.

Between March 4, 1956, and December 31, 1956, 27 separate shipments of steel pipe (hereinafter referred to as "Group A") were delivered by the vendor to the purchaser, by deep sea ships, at Vancouver, B.C. Nineteen additional shipments of steel pipe (hereinafter referred to as "Group B") were delivered, by deep sea ships, by the seller to the buyer in Vancouver, between January 4, 1957, and July 25, 1957. The said shipments were delivered at the Canadian Pacific Railway Company's dock, or at the National Harbours Board dock, in Vancouver.

In respect to each of the shipments of Groups A and B, the following procedure was carried out by the dock owner:

(1) The dock owner, upon receipt of the ship's manifest, prepared an expense bill. This bill was then sent to the respondent and contained a statement of all harbour or terminal charges.

(2) Prior to the delivery of the first shipment, the respondent had posted security with the dock owner and was, therefore, entitled to and did have a credit account.

(3) The dock owner charged or debited the respondent, in its weekly ledger account, for the terminal or harbour charges.

(4) The dock owner sent an advice note to the respondent, advising of the arrival of each shipment.

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(5) The respondent presented the bill of lading (after payment) to the dock owner and took delivery of the steel shipment. The steel was unloaded from the ship to railway cars at the dockside.

"Terminal or harbour charges" is the expression used by dock owners in reference to an overseas delivery in the Port of Vancouver and consists of:

(a) Cargo Rates—9 cents per ton payable to National Harbours Board for harbour maintenance.

(b) Wharfage —60 cents per ton payable to dock owner for use of the dock.

(c) Handling —$1.80 per ton payable for stevedoring wages for unloading of the ship.

In respect to the shipments in Group A, terminal charges were debited by the dock owner to the respondent's account and were paid by the respondent and amounted, in all, to $84,090.34.

In respect to the shipments in Group B, terminal charges were debited by the dock owner to the respondent's account and were paid by the respondent and amounted to $57,492.49.

The Commissioner, Social Services Tax, assessed a tax of five per centum on the terminal charges of $84,090.34 for the Group A shipments, on the basis that this amount of money was part of the delivered price of the steel. The tax amounts to $4,204.52, to which there is added interest at six per centum from February 20, 1957. Similarly, a tax of $2,874.61 was assessed against the Group B shipments, plus interest at six per centum to May 20, 1958.

The respondent appealed the assessments and, when subsequently the assessments were affirmed by the Minister of Finance, the respondent then appealed, pursuant to s. 15 of the *Social Services Tax Act*, R.S.B.C. 1948, c. 333, as amended, to a Judge of the Supreme Court of British Columbia.

The appeal was successful and the assessments were set aside. This decision was affirmed unanimously by the Court of Appeal[1].

[1] (1961), 35 W.W.R. 70, 28 D.L.R. (2d) 518.

The provision of the *Social Services Tax Act*, under which the tax was sought to be imposed, is contained in s. 3, the relevant subsections of which provide as follows:

3. (1) Every purchaser shall pay to Her Majesty in right of the Province at the time of making the purchase a tax at the rate of five per centum of the purchase price of the property purchased.

* * *

(3) Every person residing or ordinarily resident or carrying on business in the Province who brings into the Province or who receives delivery in the Province of tangible personal property acquired by him for value for his own consumption or use, or for the consumption or use of other persons at his expense, or on behalf of, or as the agent for, a principal who desires to acquire such property for the consumption or use by such principal or other persons at his expense, shall immediately report the matter in writing to the Commissioner and supply to him the invoice and all other pertinent information as required by him in respect of the consumption or use of such property, and furthermore, at the same time, shall pay to Her Majesty in right of the Province the same tax in respect of the consumption or use of such property as would have been payable if the property had been purchased at a retail sale in the Province.

The words "purchaser", "retail sale" and "purchase price" are defined in s. 2 of the Act as follows:

"purchaser" means any person who acquires tangible personal property at a sale in the Province for his own consumption or use, or for the consumption or use by other persons at his expense, or on behalf of, or as the agent for, a principal who desires to acquire such property for consumption or use by such principle or other persons at his expense;

"retail sale" means a sale to a purchaser for purposes of consumption or use and not for resale;

"sale price" or "purchase price" means a price in money, and also the value of services rendered, the actual value of the thing exchanged, and other considerations accepted by the seller or person from whom the property passes as price or on account of the price of the thing covered by the contract, sale, or exchange, and includes the charges for installation of the thing sold, for interest, for finance, for service, for customs, for excise, and for transportation, whether or not such are shown separately on the invoice or in the vendors' books;

The appellant's contention is that the concluding words of subs. (3) of s. 3, i.e., "the same tax in respect of the consumption or use of such property as would have been payable if the property had been purchased at a retail sale in the Province", mean that the respondent is required to pay, not a tax of five per centum of the actual purchase price of the property purchased, but five per centum of what would have been the retail price of the property purchased, assuming that the steel pipe had been purchased at a retail sale in British Columbia. The argument is that the words "the

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same tax" do not mean the same kind of tax on purchase price as is payable under subs. (1) in respect of property purchased in British Columbia, but the same amount of tax as would have been paid had the property actually been purchased at a retail sale in British Columbia.

I do not construe the words "the same tax" in subs. (3) as meaning "the same amount of tax" as would have had to be paid in respect of a notional retail purchase of the steel pipe in British Columbia. I construe them as meaning that, in the circumstances outlined in subs. (3), the tax which applies on retail purchases in the Province also applies on the consumption or use of property brought into the Province. That tax is a tax of five per centum of its purchase price. This is my interpretation of the concluding words of this subsection and it is reinforced by the portion of the subsection which precedes them.

A person who brings into British Columbia, or receives delivery of property in that Province, is required immediately to report the matter to the Commissioner. He must also supply the Commissioner with the invoice and all pertinent information required by the Commissioner in respect of the consumption or use of the property. The invoice will give to the Commissioner the purchase price of the property. The pertinent information, which relates only to consumption and use, will enable him to decide whether or not the tax applies. The recipient is further required, at the same time, to pay the tax imposed by the subsection. This means, therefore, that if tax is payable it attaches immediately upon the property being brought into British Columbia, or on receipt of it in that Province.

In view of the nature of the contract for the purchase of the steel pipe in question, those goods became the property of the respondent while they were on the high seas. Accordingly, they became subject to tax as soon as they entered the Province.

The terminal charges paid by the respondent were not a part of the purchase price, either within the general meaning of that term or within the definition contained in the Act. Matters such as installation charges, interest, finance

charges, customs, excise or transportation, referred to in that definition, all relate to expenditures made by the vendor, whether or not they are separately shown on the invoice or in the vendor's books. The terminal charges in question here were charges paid, not by the vendor, but by the purchaser, after property in the goods had passed to it, after the goods had been brought into the Province and after the tax attached and became payable.

I do not find in subs. (3) or in s. 25, to which we were referred by counsel for the appellant, any obligation or authority upon or in the taxpayer or the Commissioner to estimate the retail price of the steel pipe on a notional sale of it in British Columbia. I think subs. (3), by requiring payment of the tax as soon as the goods entered British Columbia, contemplated that such tax would be determined on the purchase price as disclosed in the invoice, which the recipient was required to deliver to the Commissioner.

In my opinion, the assessments under appeal were not authorized by the statute and, accordingly, I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: Paine, Edmonds, Mercer & Williams, Vancouver.

Solicitors for the respondent: Davis, Hossie, Campbell, Brazier & McLorg, Vancouver.