O.F. NELSON AND CO. LTD.

v

COLLECTOR OF CUSTOMS AND TAXES

High Court Apia
15 December 1937
Morling CJ

STATUTES (Interpretation) - License fees paid for year commencing 1 April 1937 allowed to be set off against store taxes assessed and payable in same year, although based on previous year's business - s 7 Revenue Amendment Ordinance, 1936 effective 1 April 1937 - s 20 Revenue Ordinance, 1929 - s 20(e)(vi) Acts Interpretation Act, 1924.

Held: The effect of any other interpretation would be to make the Amendment merely declaratory and not remedial, and to ignore the different wording in s 7(2) and s 7(3), viz., "tax for" a given year and "tax in respect of" a given year, which imports a difference in meaning. Also, the presumption of intended continuity in a system of permanent taxation is against an interpretation that would in effect double taxation for the first year to which the legislation is applicable and not for succeeding years. Plain words would be necessary to effect such an intent.

Klinkmueller and Pleasants for objector.
Crown Solicitors for Collector.

MORLING CJ. The Company claims a deduction of about £479, being the license fees paid for the year commencing on the 1st April, 1937 from the store tax assessable and payable in the same year. The Company paid the store tax on the 31st July, 1937 under protest, and it is agreed by the parties that a refund shall be made if it is determined by the Court that a deduction of the license fees should have been made. After hearing counsel, at my request, they have submitted written arguments, both carefully prepared, and in my view covering any points affecting the question. A good deal of the history of the legislation has been traversed, but while this may be of some use in arriving at an understanding of the matter, it is not necessary in my opinion to go beyond section 7 of the Revenue Amendment Ordinance, 1936 read together with the Revenue Ordinance, 1929.

Great reliance is placed by counsel for the Collector upon subsection (2) of section 7, which he argues refers to the turnover for the year ended 31st March, 1937, and has the effect of disallowing a deduction of license fees payable for the year commencing 1st April, 1937 from the store tax payable in that year. Counsel for the Company, on the other hand, as part of his argument, submits that the expression "for the year ending 31st March, 1937" in subsection (2) means the store tax payable in that year.

By section 7 of the 1936 Amendment, section 29 of the 1929 Ordinance was repealed and replaced. A new store tax was imposed computed like the old on trading transactions for the preceding year. It is immaterial that it was computed on a different basis, i.e., instead of turnover the selling value of all goods sold was taken. The storekeeper was made liable for a business license fee of £15 (new Second Schedule, Part B, item 36), the license fee being payable on 1st April and therefore practically in advance, because to carry on business

without a license is made an offence. The store tax is payable as early in the financial year as the Collector finds it convenient to issue his assessments. It cannot be quite in advance, but it may be, and generally is, payable long before the financial year is over. Subsection (2) of section 7 uses the phrase "tax for a year". The same phrase is perhaps used in section 20 of the principal Ordinance, which like section 7 of the Amendment applies inter alia to store tax, although it is possible that there the phrase "for the year" refers to "use of the Administration". Prima facie tax "for" a year should mean tax normally assessable and payable in that year. That meaning is certainly appropriate to section 20 of the principal Ordinance. Subsection (3) of section 7 avoids the phrase. The difficulty of saying that in subsection (2) "store tax for the year ending the 31st day of March, 1937" means "store tax assessable and payable in the year 1936-1937" is that the amending Ordinance did not come into force until 1st April, 1937, by which date, under normal procedure, the tax in question would long ago have been collected. Even in December, 1936, when the Ordinance was passed, "payable" was an inapt expression if it applied to moneys that well might be, and probably in many cases were, already paid. The first annual store tax that the amending Ordinance purports by subsection (1) to deal with or to affect is the store tax payable in the next year after the Ordinance came into force; i.e., the year 1937-1938. Subsection (2) must, if possible, be read in harmony with subsection (1), which is obviously the dominant part of section 7. On this reasoning the conclusion seems to be that subsection (2) means, however infelicitous the wording, "store tax assessable on the turnover for the year ending 31st March, 1937". There is a practical support for this reasoning. A return of selling value, et cetera, may, for its convenient compilation, require the keeping of books and raising of accounts on a different system from that required for the compilation of a return of turnover. On 30th December, 1936, the trading year was three-quarters over, and it would have been a hardship on the commercial community to ask them to rearrange their accounting systems and re-write their accounts from the previous 1st April.

Prima facie an enactment is to be read as remedial and not as merely declaratory. If subsection (2) refers to store tax assessable in the year 1936-1937 in respect of turnover for 1935-1936, then, since the Ordinance only took effect on 1st April, 1937, it was an unnecessary enactment and said no more than was already the law by virtue of section 20(e)(vi) of the Acts Interpretation Act, 1924.

There is another reason for thinking that subsection (2) must refer to store tax assessable in the year 1937-1938. When subsection (2) and subsection (3) are examined together it is seen that the former uses "for", the latter "in respect of". The difference in phraseology imports by strict rules of construction an intended difference in meaning. It is indicated below that in subsection (3) the words "in respect of" the year 1937-1938 must be taken to indicate a tax assessable and payable in 1937-1938. Unless the Legislature is to be accused of arbitrarily varying its language, the words of subsection (2) would mean something different from what "tax in respect of the year 1936-1937" would have meant.

If the above conclusion be adopted then the effect of subsection (2) without (for the present) looking at subsection (3), is, (a) that store tax assessable and payable in 1937-1938 is to be computed on the turnover for 1936-1937 instead of on selling value of goods sold in 1936-1937; and (b) that subsection (1) cannot be invoked and the business license fee normally payable on 1st April, 1937 cannot be allowed as a credit.

Notwithstanding the foregoing, there are arguments for interpreting the expression "for the year" as meaning the tax assessable and payable in the year, as for instance, that it is a saving clause (perhaps from excessive caution), or is to avoid an inconvenience in altering the method of making out returns as indicated earlier in the Judgment, which arguments can be gathered from the history of the legislation as well as from the 1936 Ordinance read with the principal Ordinance. But, if decision were to depend on the question whether "for the year" refers to

the year in which sales were made and not the taxation year, then, apart from subsection (3), the decision might well be different from the one to which I have come.

As I have said, it may be that subsection (1) is so qualified by subsection (2) that the former cannot be invoked so as to allow a deduction of the license fee. The objection to the deduction, however, is in my opinion covered by subsection (3).

Subsection (3) says that the business license fee payable "in respect of" the year 1937-1938, viz., the fee normally incurred and payable on 1st April, 1937, shall be deductible from store tax payable "in respect of" 1937-1938. There is no need to hold that, qua store tax, "in respect of" in subsection (3) must mean the same thing as "for" in subsection (2). On the contrary, as is pointed out above, prima facie the difference in wording imports an intended difference in meaning. The words "in respect of" are used twice in subsection (3), and should, if reasonably possible, be made to bear the same meaning in both places. A business license fee payable "in respect of" the year 1937-1938 can hardly mean anything but a business license fee normally incurred and payable on 1st April, 1937 entitling the holder to carry on his business until 31st March, 1938. The proper conclusion, therefore, that similarly "store tax payable in respect of" the year 1937-1938 means the store tax incurred and payable in 1937-1938 based on the turnover of 1936-1937. It follows that the business license fee normally payable on 1st April, 1937, can be deducted from the store tax assessed and payable in 1937-1938.

A system of permanent taxation must be presumed to intend some sort of continuity, and the 1936 Ordinance purports to be no more than an amendment, replacing one store tax by another, introducing a license fee for stores, but allowing the fee to be set off against the tax. Plain words would be necessary to impose what, in effect, would be double taxation for the first year to which the amending Ordinance applies. No such plain words appear in section 7.

The Company is entitled to a deduction of the amount of the license fees paid in respect of the year commencing 1st April, 1937 from the store tax assessed by the Collector on 1st July, 1937.

It was stated at the hearing that in the event of Judgment being in favour of the Company the actual amount of deduction might require some adjustment. This can be referred to the Court if necessary.

Costs to be allowed to the Company which can be settled by the Registrar failing agreement by the parties.