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IN THE COURT OF APPEAL
SUPREME COURT CIVIL APPEAL NO. 35/64

Before: The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Moody
The Hon. Mr. Justice Eccleston (Ag.)

THE COMMISSIONER OF INCOME TAX - APPELLANT

VS.

THE GLEANER COMPANY LIMITED - RESPONDENTS

Messrs. D. Marsh and Enos Grant for the Appellant
Mr. Harvey DaCosta, Q.C., for the Respondents

6th, 7th, 8th July, 1966
and 19th December, 1966.

MOODY, J.A.,

This is an appeal from the order of a Judge in Chambers dismissing an appeal by the appellant from the decision of the Income Tax Appeal Board.

The facts of the case are not in dispute and are set out in the statement setting forth the facts, and the determination of the Income Tax Appeal Board filed with the record.

The Board gave their decision in favour of the respondents, and the appellant appealed to a Judge in Chambers who dismissed the appeal.

The decision of the Income Tax Appeal Board was that "the printing, publishing and production of the Gleaner is a manufacture of articles of paper within the meaning of Item 10 of the Appendix to the Income Tax (Amendment) Law, Law 41 of 1959, Part IIA of section 3."

The learned Judge in Chambers in the course of his judgment, said: "It appears to me that the sole question I have to decide is whether the printing, publishing and production of a newspaper falls within the meaning of the words of Item 10 in their ordinary and natural sense." He concluded that it was a manufacture of an article of paper and that it clearly fell

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within the ambit of the exemption in Item 10 of Law 41 of 1959.

Before us, learned counsel abandoned the first ground of appeal filed, and pursued the second and third grounds, which are as follows:-

(2) That the printing and publishing of a newspaper does not come within the meaning of the words "the manufacture of articles of pulp, paper or paperboard" as set out in the Appendix to Law 41 of 1959.

(3) That the Learned Trial Judge in holding otherwise misdirected himself in Law and placed a construction upon the words of the Statute which they could not reasonably bear.

In support of these, he urged that, in giving effect to the clear and unambiguous words of a Statute, the words themselves must be interpreted in their plain, ordinary sense, and not in their literal and etymological meaning, J.P. Harrison (Watford) Ltd. v. Griffiths (~~[illegible]~~ Vol. 40 T.C. 296). Words of Item 10 of the Appendix do not in their plain and ordinary sense embrace the activity carried on by the Gleaner Company. It is incorrect to sever the words of a phrase and interpret them literally and then string them together again, (J.P. Harrison (Watford) Ltd. ~~[illegible]~~ Vol. 40 T.C. 296 Craies Statute Law, 5th Ed., p.95). Ordinary phrases and all terms such as are used in the general statute must be interpreted in their popular sense, i.e. the sense in which people whose business it is to know about such things use them. He referred to the International Standard Industrial Classification 1/4/54 - 31/12/64 Customs Tariff. Even if the literal or etymological meaning of manufacture is used, there is grave doubt whether the activity carried on by the Gleaner Company comes within it. McNicol v. Pinch, 1906 2 K.B., 352. Customs & Excise v. Savoy Hotel Ltd., The Times 11/3/66.

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If the legislature had intended that the Gleaner Company should be included in the list of basic industries mentioned in the Appendix to the Law, it would have used much clearer and more specific language, such as "printing and publishing". Waugh v. Middleton, (1853) 8 Exch. Rep. 352, and Craies Statute Law, 5th Ed. p.87-8. The use of the word "manufacture" therefore, shows it is not the intention of the legislature to include the respondent company, since the interpretation urged by respondent and accepted by the courts below would lead to the absurd result that writing letters or notes or taking notes in court with a shorthand machine would be included. He further submitted that it is not clear on the face of the statute whether the words "manufacture of articles of pulp, paper or paperboard" embrace printing and publishing of a newspaper. The rule in Heydon's case should be applied in resolving the doubt. When one looks at the mischief that the legislature intended to cure, it is quite clear that respondent company does not come within the intendment of Law 41 of 1959. The evidence in the court below is insufficient to support a finding that respondent company was manufacturing an article of paper within the meaning of Item 10 of the Appendix. All the consideration in this case is covered by the overriding principle that since the tax payer is claiming an exemption or deduction, it is for him to prove that he falls fairly, squarely and clearly within the words of the statute under which he is claiming. Maughan v. Free Church of Scotland, 3 T.C. 207 at 210.

There is doubt whether the respondent company comes within the provision of the act, and so that doubt must be resolved in the Revenue's favour. Para. 10 of Part IIA is internal evidence that Parliament intended these allowances to be an economic regulator by means of tax subsidies, whether partial or outright analogous to tax subsidies granted by Industrial Incentives Laws and such other Laws. Further it was admitted and

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conceded by respondent company that the intention of the legislature was to create an economic regulator for certain industries by way of tax subsidies.

Counsel for the respondent submitted that the words were clear and unambiguous and the court must give effect to them. The use of rules and aids to construction, e.g. Heydon's case, was only employed where the provisions of an act were obscure. In the instant case, the legislature had used the word "article" which was capable of very wide meanings:

That the mention of certain industries in clause 10 of Part IIA of the Schedule was no guide as to the type of industries intended to benefit from this provision, but a provision to exclude these industries from relief under this Part of the Law, where relief was granted to them under other enactments:

That an examination of the Appendix would disclose there was no common factor in the list of industries.

The gravamen of the submissions of learned counsel for the appellants is that the respondent company does not come within Item 10 of the Appendix to Part IIA of the Schedule to section 3 of Law 41 of 1959. It would seem, therefore, that one must look to see what is enacted in the relevant portions of the provisions of the Law.

Law 41 of 1959 is a Law to amend the Income Tax Law, Law 59 of 1954, and section 3 effects this amendment by adding a new Part as Part IIA to the Second Schedule to the principal Law. This additional Schedule defines in clause 1(b) "basic industry" as an industry for the time being specified in the Appendix in this Part of this Schedule.

Section 2 of this Schedule provides that the House of Representatives may from time to time by resolution, amend the Appendix to this Part of this Schedule.

Section 10 provides that no allowance shall be made under the provisions of this Part of this Schedule in respect of

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capital expenditure in relation to which any relief from income tax is given by virtue of any of the following Laws: Cap. 294, The Pioneer Industries (Encouragement) Law; Cap. 346, The St. Andrew Mines (Encouragement) Law; Law 45 of 1956, The Industrial Incentives Law, 1956; Law 49 of 1956, The Export Industry Encouragement Law, 1956.

The Appendix is headed "List of Basic Industries". This list is in five sections headed -

A. Manufacturing

B. Construction

C. Electricity and Steam

D. Warehouses and Cold Storage

E. Docks ,

respectively.

Section A contains 17 items varying from canning and preserving of fruits and vegetables (packing in air-tight containers of fruits and vegetables including fruit and vegetable juices) to manufacture of watches and clocks, and includes as Item 10 "manufacture of articles of pulp, paper or paperboard."

By section 53(2) of Cap. 165 of the Revised Laws of Jamaica, The Interpretation Law, every Schedule to any Law shall together with any notes thereto, be construed and have effect as part of the Law and by section 12 of the said Law - "where expressions are defined in any Law, such expressions shall have the meanings assigned to them unless there is anything in the subject or context repugnant to or inconsistent with, such meaning. The act has not specifically defined the word "manufacture" or more particularly "manufacturing", but it has employed it not only to classify certain operations which could well be described as "processing" but also to describe operations that in the limited meaning are manufacturing.

The legislature, for the purpose of this Part of the Income Tax Law, has chosen to include under Item I in the Appendix

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in the list of industries that are entitled to relief, that of packing in air-tight containers fruits and vegetables, and has classified that process as "manufacturing". This applies in equal measure to Items 2 and 3 of the Appendix - the canning and preserving of fish and the canning and preserving of meat. The legislature has clearly shown an intention to extend the meaning of the word "manufacturing" to include the operation of processing. When, therefore, consideration comes to be given to Item 10, the manufacture of articles of pulp, paper or paperboard, in this context, the process of printing and publishing and producing a newspaper comes well within the meaning of the class of manufacturing as set out in this Schedule under class A.

I agree entirely with the observations of the learned Judge in Chambers as appears on p. 44, line 22, of the record, when he says the word "article" is a comprehensive term. The use of the word "article" in this context in my opinion, tends to confirm the view that the legislature intended to give the extended meaning to the word "manufacturing" in classifying the industries listed.

On page 27, line 7, of the record, counsel for the appellant stated that the problem with which the Board was faced was to decide whether or not the legislature intended to give this sort of allowance to a company like the Gleaner, and asked if so, whether the legislature would have worded it in this obscure way. At the hearing of this appeal, counsel submitted that these investment allowances were designed to assist new and struggling industries similar to those mentioned earlier in section 10 of this Schedule, but was unable to point to anything in this Law or

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any other Law on which such a submission could be founded.

On page 43, line 22, of the record, the learned Judge with rhetorical simplicity, made plain that he was in no doubt as to whether the respondent came within the ambit of Item 10 of the Appendix to the extent that learned counsel for the appellant before us stated that the learned Judge wrongly treated the matter as though there was no doubt. I agree with the learned Judge, that in construing these provisions, there is no room for doubt or ambiguity such as would cause a court in deciding whether the respondent came within the ambit of the relief provided to resolve such doubt in favour of the Revenue.

In each case, the act of Parliament is all powerful, and when its meaning is unequivocally expressed, the necessity for rules of construction disappears and reaches its vanishing point. Rules of construction cannot override the language of a statute where the language is clear.

For these reasons, I would dismiss this appeal with costs [redacted].

SUPREME COURT CIVIL APPEAL No. 35/64

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THE GLEANER COMPANY LIMITED

HENRIQUES, J.A.:

This appeal raises the question of the interpretation to be placed on Item 10 of the Appendix to the Income Tax (Amendment) Law, Law 41 of 1959, Part IIA of section 3, and arises out of a dispute between the respondents, the Gleaner Company Limited and the appellant, the Commissioner of Income Tax, over the printing and publication of the company's newspaper the Daily Gleaner. The matter was submitted first of all to the Income Tax Appeal Board, which held that the printing, publishing and production of the Gleaner was a manufacture of articles of paper within the meaning of Item 10 of the Appendix to the Income Tax (Amendment) Law, Law 41 of 1959, Part IIA of section 3. The appellant then appealed against that decision to a Judge in Chambers who held that the printing, publishing and production of a newspaper such as the Gleaner fell under the meaning of the words of Item 10 in their ordinary and natural sense, and proceeded to dismiss the appeal. It is in respect of this decision of the learned Judge in Chambers that the appellant now appeals to this Court on these grounds:-

(1) That the printing and publishing of a newspaper does not come within the meaning of the words "the manufacture of articles of pulp, paper or paper board," as set out in the Appendix to Law 41 of 1959.

(2) That the learned Judge in Chambers in holding otherwise misdirected himself in law and placed a construction upon the words of the statute which they could not reasonably bear.

.....In support/

In support of these grounds, learned counsel for the appellant has submitted, inter alia, that in giving effect to the clear and unambiguous words of a statute, the words themselves must be interpreted in their plain, ordinary sense and not in their literal or etymological meaning. If such an approach is made to the words of Item 10 of the Appendix, then, he submits, they do not in their plain and ordinary sense, cover the activity carried on by the Gleaner Co. Ltd., and even if the literal or etymological meaning of "manufacture" is used, it is open to question whether the business carried on by the Gleaner Co.Ltd. comes within it. If it was intended to include such an activity as that conducted by the Gleaner Company, then one would have expected the legislature to have used much more clear and specific language, and would have employed such words as "printing" and "publishing". He further submitted that there was internal evidence in the statute which showed it was the intention of Parliament to make provision for these allowances as economic regulators by means of tax subsidies, which partook of the same nature as tax subsidies granted by those Laws which provided for Industrial Incentives.

It was the submission of counsel for the respondent on the other hand, that the words in the statute were clear and unambiguous, and in those circumstances, the Court must give effect to them. He further submitted that the word "article" was one which was capable of a number of meanings, and that the printing, publishing and production of the Gleaner newspaper fell squarely within Item 10.

I have considered carefully the arguments addressed to this Court in this matter and have come to the conclusion that the appeal should not succeed.

The Appendix is headed - List of Basic Industries - and is divided into several sections. Section A contains some seventeen items which range from the canning and preserving of

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fruits and vegetables to the manufacture of watches and clocks, and includes Item 10 - "Manufacture of articles of pulp, paper or paper board". It is clear to me from a consideration of the individual items listed under "Manufacture" in the Appendix, that the legislature has sought to extend the meaning of the word "manufacture" to include the activity known as processing. If this approach be adopted in a consideration of Item 10, "the manufacture of pulp, paper or paper board", then the printing, publication and production of a newspaper might well be said to fall within that particular item.

The learned Judge in Chambers, in his succinct judgment, dealt with the issues presented to him, and came to the following conclusion - "Having therefore found that the printing, publishing and production of a newspaper is a 'manufacture' and that a newspaper is an 'article' of paper, I am constrained to the view that the printing, publishing and production of the Gleaner newspaper clearly falls within the ambit of the exemption in Item 10 of Law 41 of 1959."

In my view, the learned Judge came to a correct conclusion, and I have not been persuaded to conclude otherwise by the arguments addressed to us by the appellant. I would therefore dismiss the appeal with costs.