JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 25 OF 2000

BEFORE: THE HON MR. JUSTICE BINGHAM, J.A.
THE HON MR. JUSTICE HARRISON, J.A.
THE HON MR. JUSTICE WALKER, J.A.

BETWEEN:	J. WRAY & NEPHEW LTD	APPELLANT
AND	THE COMMISSIONER OF GENERAL CONSUMPTION TAX	RESPONDENT

Dr Lloyd Barnett and Dawn McNeil instructed by McNeil and McFarlane for appellant

Lackston Robinson Snr. Asst Attorney General, Donna Dodd, Marlene Parker and Annaliesa Lindsay, instructed by Director of State Proceedings for respondent

February 20, 21, 22, 25, 26, 2002 & April 11 2003

BINGHAM, J.A:

I have taken the opportunity of reading in draft the judgments prepared in this appeal by Harrison and Walker, J.J.A. I am entirely in agreement with their reasons set out therein and the conclusion reached that this appeal be dismissed with an order for costs.

There is nothing that I could usefully add.

HARRISON, J.A:

I have read the judgment of Walker, J.A. and I agree with his conclusion. However, I wish to add my comments.

This is an appeal from the judgment of Orr, J. in the Revenue Court on December 12, 1999. The respondent had made an assessment of the appellant for the payment of general consumption tax to which the appellant objected. The respondent made a decision on the objection, as a consequence of which the appeal was filed in the Revenue Court and heard by Orr, J.

The main issue in this appeal is whether or not the provision of uniforms by the appellant for the benefit of its unionised and non-unionised staff qualifies as items required for the production of its taxable supplies. If so, such expenditure attracts the benefit of input tax under the provision of the General Consumption Tax Act ("the Act").

The appellant is a registered taxpayer, carrying on the business of the blending, bottling and distribution of fine rums, spirits and wines. The majority of the employees of the appellant is represented by two unions, with whom the appellant signed agreements that the appellant provide uniforms and lunches for its members, employees of the appellant. The matter of lunches is irrelevant to these proceedings.

The non-unionised staff is also provided with uniforms. All uniforms are supplied to the appellant for its workers, by suppliers. The appellant paid for the cost of these uniforms inclusive of general consumption tax.

As a result of an audit by the taxpayer audit unit of the respondent, the appellant was assessed as liable to pay the sum of $744,602.34 wrongly claimed by the appellant for the period October 1, 1993 to September 30, 1996 as input tax with which it should be credited on the supply of such uniforms to its employees.

Since October 22, 1991general consumption tax is imposed under the Act on the supply, in Jamaica, on all goods and services provided by a registered taxpayer in the course of a taxable activity by the said taxpayer, by reference to the value of such goods and services (section 3). The rate of such tax is 15% (section 4) and must be calculated and paid over by the taxpayer.

"Input tax" is defined in section 2 of the Act. It reads:

> "input tax" in relation to a registered taxpayer means -
>
> (a) tax charged under section 3(1) on the supply of goods and services made to that taxpayer or on the importation into Jamaica of goods and services by that taxpayer being goods and services required wholly or mainly for the purpose of making taxable supplies ..."

"Taxable activity" in the context of this case, means an activity carried on in the form of a business or trade, continuously or regularly involving the supply of goods and services to any other person for a consideration. A

"taxable supply" means a supply of goods and services on which general consumption tax is imposed (section 2).

The appellant undoubtedly engaged in the taxable activity being the business of "blending, bottling and distribution of fine rums, spirits and wines". The appellant purchased the uniforms and supplied them to their employees and paid general consumption tax on such expenditure. This latter tax, the appellant claimed, should be classified as input tax, refundable to it, because the uniforms qualified as items:

> "... required wholly or mainly for the purpose of making taxable supplies ..."

On the contrary, if the supply of such uniforms is not found to be so required, the said taxpayer is not entitled to the benefit of input tax paid on their acquisition.

Orr, J. found that the appellant was not entitled to the benefit of the input tax. He said, at page 139 of the Record:

> "... I hold that the definition of input tax requires that the expenditure must have been required "wholly or mainly for the direct purpose of making taxable supplies, that is, the blending and bottling of fine rums, spirits and wines.
>
> I hold that the supply of uniforms for the appellant's staff though desirable is not required (necessary) wholly or mainly for the purpose of making its taxable supplies. It was not done for the direct purpose of bottling of fine rums etc."

In ***Mallalieu v Drummond*** (Inspector of Taxes) [1983] 2 All E.R. 295, their Lordships in the House of Lords considered the question of whether or

not the expenditure of a female barrister for the purchase, and for "cleaning and laundering certain items of clothing" which she wore to chambers and court, were deductible as expense "wholly and exclusively ... expended for the purposes of her profession," within the provisions of section 130(a) of the Income and Corporation Taxes Act, 1970. The expenses would be deductible if they were regarded as "... money wholly and exclusively laid out or expended for the purpose of the trade profession or vocation..." Their Lordships held that the money expended was not deductible because it was not "wholly and exclusively" for the purpose related to her profession. Lord Brightman on behalf of the majority at page 1103, inter alia said:

> " ... she needed to travel to work and clothes to wear at work, and I think it is inescapable that one object, though not a conscious motive was the provision of the clothing that she needed as human being. I reject the notion that the object of a taxpayer is inevitably limited to the particular conscious motive in mind at the moment of expenditure. Of course the motive of which the taxpayer is conscious is of a vital significance, but it is not inevitably the only object which the commissioners are entitled to find to exist. In my opinion the commissioners were not only entitled to reach the conclusion that the taxpayer's object was both to serve the purposes of her profession and also to serve her personal purposes."

Their Lordships rejected the narrow test of the conscious motive of the taxpayer at the time of making the expenditure.

The wording of the statute under consideration in that case, served to confer the tax benefit on the taxpayer only when the expenditure was exclusively for the purpose of her profession. Although that statute differed from the statute in the instant appeal, the decision is helpful in demonstrating the manner in which a court will construe words in the context in which they are used.

In the instant case, the interpretation of the phrase "required wholly or mainly for the purpose of making taxable supplies" is the main issue.

A cardinal principle governing the interpretation of statutes is that words must be given ~~their ordinary and natural~~ meaning, and must be considered in the context in which they are used.

Orr, J. in holding that the appellant did not qualify for the credit of input tax for its expenditure for uniforms, interpreted the word "required" to mean "necessary". With that interpretation I do not disagree.

Prior to the agreement dated February 2, 1994 between the appellant and the union representing the workers and:

> "earlier agreements between the appellant and the unions ... making (of) taxable supplies ..."

by the appellant was not in any way impeded nor terminated by the absence of the provision of uniforms for workers. The fact that an employer "desires" the uniform for its staff, does not make it "required" for the purposes in contemplation under the Act. To be " required", it seems to me, it must be seen as essential to the making of "taxable supplies".

The uniforms must be items of such a nature that, without them, the appellant would be quite unable to produce the taxable supplies.

The provision of uniforms was for the satisfaction of a secondary purpose, that is, the honouring of the 1994 agreement with the union. The fact that its breach may have created a degree of industrial unrest is irrelevant to the question of whether or not the uniforms were "required" as contemplated by the Act.

In addition, the provision of uniforms, may be desirable, for the improved look and presentable appearance of the staff. This provision may even assist in the areas of management, namely sales and promotion of the product. However, although these purposes may have been for the oblique motive of benefiting the appellant, they are for secondary purposes.

The phase "wholly or mainly" in the context of the statute means that the provision of uniform must be seen as essentially at least, as, the major aspect in the "making of taxable supplies". This was not so.

I agree with Mr Robinson for the respondent that the provision of the uniforms must be referable to the taxable supplies on which the general consumption tax is payable and not on the wider activity of the appellant. In so far as Orr, J. sought to import into the words of the statute the word "direct", it is unsupportable. However, he cannot otherwise be faulted. I also agree that the appellant is not entitled to the benefit of the refund of the tax paid, as input tax.

I would dismiss the appeal with costs.

WALKER, J.A.:

The issue in this appeal is whether pursuant to the provisions of Regulation 14 of the General Consumption Tax Regulations, 1991 the appellant company, a registered taxpayer, may claim a tax credit in respect of uniforms supplied to its employees for use in the course of the company's business. More precisely, the issue is whether such uniforms qualify as goods that are required by the appellant company wholly or mainly for the purpose of making taxable supplies so as to render the tax payable on such goods "input tax" within the intendment of section 2 (1) of the General Consumption Tax Act ("the GCT Act"). Prior to the initiation of the present appeal the same issue had been taken and argued before Courtenay Orr, J., judge of the Revenue Court, who came to a conclusion in favour of the respondent. The matter had come to that judge on appeal from a decision of the respondent made on December 1, 1997 after the issue had been originally considered and similarly determined by that authority.

So far as is relevant for present purposes the term "input tax" is defined in s.2(1) as follows:

> " 'input tax' in relation to a registered taxpayer means—
>
> > (a) tax charged under section 3(1) on the supply of goods and services made to that taxpayer or on the importation into Jamaica of goods and services by

> that taxpayer being goods and services required wholly or mainly for the purpose of making taxable supplies."

In the same section of the GCT Act the term "taxable supply" is defined to mean "any supply of goods and services on which tax is imposed pursuant to this Act". Section 3(1) of the GCT Act provides as follows:

> "3. –(1) Subject to the provisions of this Act, there shall be imposed, from and after the 22nd day of October, 1991, a tax to be known as general consumption tax—
>
> (a) on the supply in Jamaica of goods and services by a registered taxpayer in the course or furtherance of a taxable activity carried on by that taxpayer; and
>
> (b) on the importation into Jamaica of goods and services, by reference to the value of those goods and services."

It is common ground that the appellant company is a registered taxpayer and carries on a business which is a taxable activity within the contemplation of the GCT Act. That business consists only in the making of taxable supplies in the nature of the blending, bottling and distribution of fine rums, spirits and wines. Pursuant to Heads of Agreement made in 1994 with certain trade unions acting as bargaining agents for the company's employees, the appellant company undertook a legal obligation to provide, among other things, uniforms for its unionized

employees. Also by virtue of contracts of employment with its non-unionized staff the appellant company assumed a similar legal obligation. The appellant company does not, itself, carry on the business of manufacturing such uniforms as are required to fulfil its legal obligations as aforesaid. These uniforms are furnished by suppliers to the company at a cost. In both cases the cost of the uniforms is factored into employees' remuneration packages and forms a part of the consideration paid to the employees for the performance of the work they carry out. So the question arises: Are uniforms required wholly or mainly by the ~~appellant company for the purpose of~~ making its taxable supplies? If so, the appellant company may claim a tax credit for input tax paid in that regard. If not, no such credit is claimable.

In order to resolve this question it is necessary to construe the provisions of section 2 (1) of the GCT Act against the background of the evidence as hereinbefore described. It is unchallenged affidavit evidence adduced by the appellant company through its General Manager, Finance and Administration, Rakesh Goswami.

On the meaning of the word "required" Courtenay Orr, J. who heard this matter in the Revenue Court on appeal from the decision of the Commissioner of General Consumption Tax found as follows:

> "I hold that the ordinary and primary meaning of the word "require" in the context in which it is used is "to need or depend on for success, or fulfillment". – an imperative; and that is the sense

> in which the word is used in the definition of 'input tax'.
>
> Another factor which points to the interpretation of the word 'required' as being "necessary" is that the draftsman uses the word 'acquire' in the other part of the definition of input tax in the very next paragraph in which the tax charged is special consumption tax on prescribed goods. If the legislature had meant 'required' to have the meaning of 'desired' then surely they would have used a word which would more clearly convey that meaning rather than a word that is more often than not used in the sense of what is demanded or necessary".

I think that Orr, J. was eminently right in his construction of the word "required" as used in the definition of input tax. I interpret the judge's use of the word "imperative" to mean necessary for the purpose of making taxable supplies (as the judge, himself, went on to make clear later on in the passage quoted above) and not as Dr. Barnett submitted the judge interpreted it in the sense that the supply received by the taxpayer company had to be an exclusive method of performing the taxable activity for input tax on that supply to be deductible.

As to the meaning of the term "wholly or mainly" counsel on both sides relied, though for different reasons, on ***Mallalieu v Drummond*** [1983] 2All ER 1095.

The headnote to that case, a decision of the House of Lords, is instructive. It reads as follows:

> "The taxpayer was a practising barrister. During the year 1976-77 she spent some £564 on a

replacement, cleaning and laundering of certain items of clothing which she wore in court, and sought to deduct that sum when computing the profits of her profession as being expenses "wholly and exclusively ... expended for the purposes of [her] profession" within s130(a) of the Income and Corporation Taxes Act 1970. The inspector of taxes disallowed the deduction and the taxpayer appealed to the General Commissioners. The commissioners found, as facts, that the taxpayer had ample other clothing for the purposes of warmth and decency, that she would not have purchased any of the disputed items had it not been for the requirement of her profession that she should be so clothed, that she only wore those clothes in connection with her work, that she bought the disputed items ~~only~~ because she would not have been permitted to ~~appear~~ in ~~court~~ if ~~she did~~ not, when in court, wear them or similar clothes, and that the preservation of warmth and decency was not a consideration in her mind when she bought them. The commissioners considered that notwithstanding that the taxpayer's sole motive in choosing the particular clothes was to satisfy the requirements of her profession and that had she been free to do so she would have worn different clothes, the expenditure had a dual purpose, the professional one of enabling her to earn profits in her profession and the non-professional one of enabling her to be properly clothed while engaged in her professional activity. They therefore held that, because of that dual purpose, the taxpayer was not entitled to the deduction claimed. On an appeal by the taxpayer, the judge held that there was no evidence to support the commissioners' conclusion that the taxpayer had a dual purpose in mind, but only evidence to conclude that the expenditure on the disputed items was incurred by the taxpayer solely for the purpose of carrying on her profession, and that the benefits of warmth and decency which she would enjoy while wearing the clothes were

purely incidental to the carrying on of her profession. Accordingly, he held that the expenditure was deductible and allowed the appeal. The Crown appealed unsuccessfully to the Court of Appeal and further appealed to the House of Lords.

Held (Lord Elwyn-Jones dissenting) – In determining whether an expense was wholly and exclusively expended for the purposes of the taxpayer's profession within s.1 30(a) of the 1979 Act, the conscious motive of the taxpayer at the moment of expenditure, although of vital significance in determining the object of the expenditure, was not conclusive of the matter, and the finding that the taxpayer's conscious motive for making the expenditure was exclusively for the purposes of her profession did not preclude the commissioners from finding that the expenditure also satisfied other objects apart from professional purposes. The expenditure by the taxpayer on the maintenance of clothing which conformed to the dress requirements of her profession was made not only for professional purposes but also for personal purposes, namely so that she could be warmly and decently clothed. Accordingly, the commissioners were correct in concluding that the expenditure had a dual purpose, one professional and the other non-professional. It was irrelevant that non-compliance with the dress requirements of her profession would have prevented the taxpayer from earning her living, since other professional people also faced various sanctions, albeit less damaging, if they did not conform to the dress code of their particular profession and the right of deduction should not depend on the degree of the sanction, and moreover s 1 30(a) of the Act was not concerned with the necessity of the expenditure. Furthermore, there was no distinction between a barrister, whether male or female, and any other self-employed person when determining the right to claim a deduction

> under s 1 30 of the 1970 Act for expenditure on the maintenance of a complete wardrobe of clothing used only at work or for travel to and from work. The appeal would therefore be allowed."

In delivering his opinion with which the majority of their Lordships' House concurred Lord Brightman said at pp.1103-1104:-

> "I return to the question for your Lordships' decision whether there was evidence which entitled the commissioners to reach the conclusion that the object of the taxpayer in spending this money was exclusively to serve the purposes of her profession, or was also to serve her private purposes of providing apparel with which to clothe herself. Slade J felt driven to answer the question in favour of the taxpayer because he felt constrained by the commissioners' finding that, in effect, the only object present in the mind of taxpayer was the requirements for her profession. The conscious motive of the taxpayer was decisive. The reasoning of the Court of Appeal was the same. What was present in the taxpayer's mind at the time of the expenditure concluded the case.
>
> My Lords, I find myself totally unable to accept this narrow approach... I reject the notion that the object of a taxpayer is inevitably limited to the particular conscious motive in mind at the moment of expenditure. Of course the motive of which the taxpayer is conscious is of a vital significance, but it is not inevitably the only object which the commissioners are entitled to find to exist. In my opinion the commissioners were not only entitled to reach the conclusion that the taxpayer's object was both to serve the purposes of her profession and also to serve her personal purposes, but I myself would have found it impossible to reach any other conclusion.

> It was inevitable in this sort of case that analogies would be canvassed; for example, the self employed a nurse who equips herself with what is conveniently called a nurse's uniform. Such cases are matters of fact and degree. In the case of the nurse, I am disposed to think without inviting your Lordships to decide, that the material and design of the uniform may be dictated by the practical requirements of the art of nursing and the maintenance of hygiene. There may be other cases where it is essential that the self-employed person should provide himself with and maintain a particular design of clothing in order to obtain any engagements at all in the business that he conducts. An example is the self-employed waiter, mentioned by Kerr L.J. who needs to wear 'tails'. In his case the "tails" are an essential part of the equipment of his trade, and it ~~clearly would be open~~ to the commissioners to allow the expense of their upkeep on the basis that the money was spent exclusively to serve the purposes of the business. I do not think that the decision which I urge on your Lordships should raise any problems in the "uniform" type of case that was so much discussed in argument. As I have said, it is a matter of degree ... So, my Lords, I respectfully differ from the conclusion reached by Slade J and by the members of the Court of Appeal. I would allow this appeal."

Accordingly, His Lordship rejected the notion that the object of a taxpayer is inevitably limited to the particular conscious motive in mind at the moment of expenditure, finding instead that although that object is of vital significance it is not inevitably the only object which a tribunal is entitled to find to exist.

Dr. Barnett cited ***Mallalieu*** in an attempt to demonstrate that where, as in that case, the test was one of exclusivity (the words used

were "wholly and exclusively") a taxpayer's claim would fail if there was a duality of purpose surrounding the controversial expenditure. He said the present case was different. The words used are "wholly or mainly". Here no question of duality of purpose arises since the evidence points irresistibly to the fact that the appellant company provided uniforms for its employees wholly for the purpose of making its taxable supplies. In this regard Dr. Barnett also referred to several other cases such as ***Bentleys Stokes & Lowless v Beeson*** (H.M. Inspector of Taxes) [1952] 2 All ER 82, 33 TC 491; ***Morgan v Tate & Lyle Ltd.*** [1955] AC 21 (both of which were referred to in ***Mallalieu*** and ***Fawcett Properties Ltd v Buckingham County Council*** [1960] 3 All ER 503. In ***Fawcett*** it fell to the House of Lords to determine whether a condition imposed by a local planning authority in granting permission for the construction of farm workers' cottages was void as being *ultra vires* the local planning authority, or for uncertainty, or as being spent. The condition reads:

> "The occupation of the houses shall be limited to persons whose employment or latest employment is or was employment in agriculture as defined by s.119 (1) of the Town and Country Planning Act, 1947 or in forestry or in an industry mainly dependent upon agriculture and including also the dependants of such persons as aforesaid."

By a majority it was held that the controversial condition was valid, the *ratio decidendi* of the case having nothing to do with the meaning of the word "mainly" as that word was used in the condition. I did not find this

case to be of any assistance and think, myself, that in the present case the term "wholly or mainly" as used is plain and unambiguous and, indeed, self-explanatory.

As to the meaning of the word "purpose" Courtenay Orr J found as follows:

> "On the issue of purpose an income tax case ***Ward and Company Limited v Commissioner of Taxes*** [1923] A.C. 145 is instructive. The headnote reads as follows:-
>
> > 'A poll of the voters in New Zealand being about to be held under statutory authority on the question whether or not prohibition of ~~intoxicants should be~~ introduced, a brewery company carrying on business in New Zealand expended money in printing and distributing anti-prohibition literature. The poll resulted in a small majority against prohibition. The company sought to deduct the expenditure in the assessment of the income derived from their business for the purposes of the Land and Income Tax Act 1916, of New Zealand. By s.86 sub-s1(a) of that Act no deduction is to be made in respect of expenditure 'not exclusively incurred in the production of the assessable income.'
> >
> > **Held**, that the company was not entitled to make the deduction having regard to s.86, sub-s.1(a), above mentioned. Judgment of the Court of Appeal affirmed.
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> Viscount Cave in giving the judgment of the Court said at page 149:
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> > 'The expenditure in question was not necessary for the production of profit, nor was it in fact incurred for that purpose. It

> was a voluntary expense incurred with a view to influencing public opinion against taking a step which would have depreciated and partly destroyed the profit-bearing thing. The expense may have been wisely undertaken, and may properly find a place, either in the balance sheet or in the profit-and-loss account of the appellants; but this is not enough to take it out of the prohibition in s.86,sub-s. 1(a), of the Act. For that purpose it must have been incurred for the direct purpose of producing profits.'

It is true that this decision is based on the wording of a particular statute, but its importance lies in the fact that the court interpreted the wording of the statute to require that expenditure must have ~~been incurred for the~~ "~~direct purpose~~ of producing profits" in order to be deductible. Similarly, I hold that the definition of input tax requires that the expenditure must have been required wholly or mainly <u>for the direct purpose of making taxable supplies,</u> that is, the blending and bottling of fine rums, spirits and wines.

I hold that the supply of uniforms for the appellant's staff though desirable is not required (necessary) wholly or mainly for the purpose of making its taxable supplies. It was not done for the direct purpose of bottling of fine rums. Etc.

There is no real nexus, no nexus 'directly referable' to the <u>nature</u> of its taxable activity. Had the clothing been protective clothing the situation would have been different. It cannot be said that the supply of uniforms was for the direct purpose of bottling fine rums, spirits and wines.

I hold therefore that the appellant does not qualify for a credit of input tax as defined by Section 2 of the General Consumption Tax Act."

Dr. Barnett argued that by assessing this issue on the basis of "direct purpose" the judge proceeded on a false premise. In support of his argument Dr. Barnett cited a plethora of cases which I do not find it particularly helpful to list or traverse in detail at this time. Suffice it to say that it was counsel's contention that the principle to be extracted from them is that the true test of purpose is a subjective one where the intention of the taxpayer incurring the controversial expenditure is of paramount importance. The test is not an objective one as the judge seemed to have thought. Dr. Barnett said that the GCT Act was not as restrictive as the New Zealand statute referred to in ***Ward and Company Limited v Commissioner of Taxes*** (supra) which the judge followed, in the process wrongly importing from that statute into s.2(1) of the GCT Act the word "direct" to qualify the word "purpose" in the definition of "input tax". Dr. Barnett made the point that in ***Ward*** the court was dealing with a claim under the New Zealand and Income Tax Act, 1916. That situation was entirely different from the present case which concerned a claim under the GCT Act, a statute of an entirely different nature. Counsel said that the New Zealand statute and the local GCT Act embraced two completely different concepts, the one being concerned with the payment of income tax and the other with the payment of general consumption tax. He said that the judge failed to make any finding of fact in relation to the business purpose of the appellant company as to

which the evidence was unchallenged. That being so, this court was in as good a position as the judge was to make such a finding. Dr. Barnett summarized his argument thus:

> "The appellant needs and depends on the employees wholly for the purpose of making its taxable supplies of fine rums, spirits and wines. It cannot make its taxable supplies without its employees and the employees will not work without the uniforms to which they are entitled under their various contracts of employment. The employees and the uniforms merge into one element upon which the Appellant depends necessarily and absolutely for the making of its taxable supplies. The Court is entitled to take judicial notice of the fact that in the circumstances ~~and climate existing~~ in Jamaica, employees who are not provided with uniforms to which they are entitled will not work, but will resort to industrial action. The merged element is essential and therefore required, by the Appellant, wholly for the purpose of making its taxable supplies. If the employees will not work without their uniforms, then the Appellant will not be able to make its taxable supplies. It follows therefore, in the Appellant's submission, that the uniforms are required by the Appellant, wholly for the purpose of making its taxable supplies, and the sum paid to the suppliers was 'input tax' as defined."

Dr. Barnett's summary is certainly attractive, but it is untenable as I find. To the contrary Mr. Robinson cited ***Mallalieu*** as authority for the proposition that it was a matter for the court to determine the taxpayer's principal objective in making the expenditure in respect of which a tax credit was being claimed. He argued that in the context of the present case the appellant company was neither wholly nor mainly dependent

on the provision of uniforms for use by its employees for the purpose of carrying on the business of making taxable supplies i.e. the blending, bottling and distribution of fine rums, spirits and wines. The principal objective of the company in providing such uniforms was to comply with its legal obligations under private agreements made with the trade unions and also with its non-unionised staff. In order to buttress his argument Mr. Robinson adverted the attention of the court to the relevant evidence adduced by the appellant company in the Goswami affidavit which reads as follows:

> "That the Appellant carries on as its only business, the blending, bottling and distribution of fine rums, spirits and wines. In the course of and for the purposes of carrying on this business, the Appellant employs approximately 450 persons, approximately 350 of whom are represented by the National Workers Union (NWU) and the University and Allied Workers Union (UAWU) hereinafter referred to as the 'unionised staff'.
>
> That pursuant to the Heads of Agreement made in 1994 between the Appellant on the one hand and the NWU and UAWU on behalf of their members, on the other hand, the Appellant undertook to provide uniforms and lunches for the unionized staff. A copy of the said Heads of Agreement marked 'RGI' for identity, is exhibited hereto. This 1994 document represents an update of the earlier agreements between the Appellant and the unions. The provision of uniforms and lunches has been a feature of these agreements for a number of years.

> The Appellant's non-unionised staff are also required by their contracts of employment to wear uniforms and are entitled to the provision of such uniforms and lunches.
>
> That the Appellant does not itself carry on the business of providing uniforms or lunches. The uniforms are supplied to the Appellant by suppliers of uniforms and lunches are supplied by caterers. The Appellant provides canteen space for the use of its employees.
>
> That the Appellant has always prided itself on being a good corporate citizen and feels that it is its duty not only to meet the expectations of its stakeholders but also to ~~ensure~~ that in its business operations it keeps their best interests ~~in~~ focus. The Appellant includes in the term 'stakeholders,' its shareholders, its employees, its suppliers, its customers and community in which it operates".

There is great force in Mr. Robinson's submissions which I accept. While allowing for the fact that trade unionism is now a well established, integral part of the industrial life of this country, it seems to me that the sole objective of the appellant company in providing its employees with uniforms is to meet its obligations under the Heads of Agreement made between itself and the trade unions representing its unionized employees, and in respect of its non-unionised employees under the latter's contracts of employment with the company. The company it is which chose to enter into such agreements. It might as well have carried on its business effectively through the instrumentality of its employees without the

provision of uniforms, but for its legal obligations under those agreements. But in any event as Lord Brightman observed in ***Mallalieu*** it is in every case a matter of fact and degree. In my view the present case is not such a 'uniform' type of case as would attract the provisions of s.2(1) of the GCT Act in a way to entitle the appellant company to the tax credit claimed.

Accordingly, I am of the opinion that the judgment of Courtenay Orr J is correct and ought not to be disturbed. I would dismiss this appeal with costs to the respondent to be agreed or taxed.

ORDER:

BINGHAM, J.A.:

Appeal dismissed. Order of the court below affirmed. Costs to the respondent to be taxed if not agreed.