IN THE REVENUE COURT

APPEAL NO. 1 OF 1998

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

Mrs. Angella Hudson Phillips and Dawn McNeil instructed by McNeil and McFarlane for the appellant

Mrs. Barbara Lee and Frank Williams for the respondent

Heard on the 26th and 27th day of November, 1998 and the 17th day of December, 1999

COURTENAY ORR J.

The Background

The appellant carries on its sole business as blenders bottlers and distributors of fine rums and spirits and wines.

As a part of the contract of service specified employees are required to wear uniforms provided by the Appellant as a condition of employment.

The Appellant is not in the business of providing uniforms or promoting functions for the benefit of third parties whether for consideration or not.

The Appellant is a registered tax payer under the General Consumption Tax Act, (hereinafter referred to as "the Act").

The Appellant is required to file returns and pay tax each calendar month in accordance with Section 33 of the Act and Regulation 6 of The General Consumption Tax Regulations, 1991 (hereinafter referred to as "the Regulations"). The Appellant filed returns for the taxable periods between July 1, 1993 and September 30, 1996, inclusive; and upon examining the said returns, the Respondent through his authorized officers, conducted an audit of the Appellant's business for the period July 1, 1993 to September 30, 1996.

Arising out of the said Audit, the Respondent determined, inter alia, that:-

(i) The Appellant had claimed full input tax credit in respect of amounts expended on:-

* uniforms which it provided for members of its staff
* Staff entertainment and lunches

(ii). the Appellant had, in certain instances, failed to make claims for input tax credits, to which it was entitled. As a consequence, the Respondent, acting under Section 38 of the Act, raised an assessment in the sum of $9,224,894.00.

The Respondent arrived at the said sum by:-

(i) crediting the Appellant's account with the sum of $4,269,153.68 as input tax credit which it had failed to claim, as set out above.

(ii) applying Regulation 14 (5)(a)(ii) to amounts claimed for third party entertainment.

(iii) wholly disallowing the amounts claimed in respect of uniforms and staff entertainment and lunches.

Included in the sum assessed is $745,484.16, which is the actual amount of the input tax credit claimed by the Appellant in respect of uniforms, staff entertainment and lunches. The Appellant's objection, however, referred to an amount of $744,602.34 and this latter amount comprises the subject matter of this appeal.

The Appellant was notified of the Assessment by Notice of Assessment dated May 14,1997, the said Notice incorporating an Audit Report and a summary of adjustments. The Notice duly advised the Appellant that, inter alia, "penalty, surcharge and interest will be charged on all unpaid balances... in accordance with Section 54 of the Act".

By letter dated June 25, 1997 the Appellant objected to the Assessment, contending that it "has not made supplies to employees in terms of the General Consumption Tax Act... definition of 'supply'.

The Respondent's Decision not to allow the aforesaid $744,602.34 claimed as input tax credit was issued on December 1, 1997 and served on the Appellant.

> The appellant now brings this appeal against the respondents decision:
> "whereby it was **Decided** that the Appellant is not entitled to claim as a tax credit any input tax which it is charged in respect of any materials or and any goods which it supplies to any employee by way of the provision of uniforms for employees and staff functions free of charge, pursuant of Regulation 14 (7) (b) of the General Consumption Tax Regulations 1991.

And whereby it was **determined:**

> that the assessment in the sum of $744,602.34 allegedly due for the period October 1, 1993 to September 30, 1996 in respect of input tax claimed by

the Appellant be confirmed."

The Relevant Statutory Provisions

Input tax" is defined in section 2 of the GCT Act in relation to a registered taxpayer, to mean, inter alia;

> (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.
>
> (b). .....

Section 3 of the GCT Act provides for the imposition, subject to the provisions of the Act, of GCT, on inter alia,

> (a). 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.
>
> (b). .....
>
> by reference to the value of those goods and services.

"Taxable activity" is defined to mean- (so far as is relevant to this case).

> "any activity being an activity carried on in the form of a business, trade, profession, vocation, association or club which is carried on continiously or regularly by any person whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services (including services imported into Jamaica) to any other person for a consideration; but does

not include -

(a).....
(b).....
(c)....."

"Taxable supply" means - (section 2)

" any supply of goods and services on which tax is imposed pursuant to this act."

Except as otherwise provided, a taxable supply takes place, inter alia, when:

(a) an invoice for the supply is issued by the supplier; or
(b) payment is made for the supply; or
(c) the goods are made available or the services are rendered, as the case may be, to the recipient whichever first occurs."

9. Section 63 (1) (k) of the GCT Act empowers the Minister of Finance to make regulations prescribing the circumstances in which a registered taxpayer may be given credit against output tax paid by him. The Minister has, by regulation 14 of the GCT Regulations, 1991, prescribed the circumstances for the grant and the quantum of such credit. Regulation 14 provides, inter alia, that:

"(1) Subject to paragraphs (2), (3), (4), (5), (6) and (6A), a registered taxpayer shall, in respect of a taxable period, be entitled to claim as a credit any **input tax** payable by him during the period and any other amounts specified in this regulation.

(2) For the purposes of paragraph (1), the input tax in relation to which a credit may be claimed shall be the sum of:

(a) any amount stated as tax on a tax invoice issued to the registered taxpayer in respect of taxable supplies

made to him during a taxable period and

(b) any **input tax** paid by that registered taxpayer on the importation of taxable supplies into Jamaica, being supplies used by the registered taxpayer in carrying out his taxable activity.

The Decision, Grounds of Appeal and Subsequent Pleadings

In his letter of decision addressed to KPMG Peat Marwick, the respondent gave the following reason for his decision:

> "We have reviewed your case, Howerer, the previous position of the department has not changed, and rules that Regulation 14 (7) (b) applies in the circumstances covered by the assessment."
>
> The letter continued:
>
> "We therefore will not discharge the amount of $744,602.34 of the assessment which relates to the provision of uniforms for employees and staff functions."

The appellant filed a notice and grounds of appeal. The grounds of appeal read as follows:

> "(3). .....
>
> (i) That Pursuant to the provisions of Regulation 14 (1) and 14 (2) (a) and (b) the Appellant is entitled to claim as a credit input tax paid by it in respect of taxable supplies made to it during a taxable period, being supplies used by it

in carrying out its taxable activity.

(ii). That the provisions of Regulation 14 (7) (b) are not applicable because the provision of uniforms to employees is not a supply within the meaning of section 18 of the General Consumption Tax Act."

(iii). That the provisions of Regulation 14 (7) (b) are not applicable to the Staff functions arranged for employees of the Appellant as such functions do not constitute supply within the meaning of Section 18 of the General Consumption Tax Act."

The respondent thereupon filed a statement of case, and later on an amended statement of case, in which he prayed that the decision should be confirmed for the following reasons:

"4.....

(i) The tax charged to the Appellant in respect of the provision of uniforms and lunches for its employees cannot be interpreted to be input tax as defined in section 2 of the Act, not being tax on goods and services required wholly, or mainly for the purpose of making taxable supplies.

(ii) The Appellant is not entitled to claim the said amounts as tax credits since they are not amounts specified in Regulation 14.

(iii) The Appellant is not entitled to claim

> the said amounts under regulation 14 (2), said amounts being neither input tax nor amounts paid by the Appellant in respect of "supplies used in carrying out [its] taxable activity.
>
> (iv) The Respondent agrees with paragraph 3 (ii) and (iii) of the Notice of Appeal; (supra), and contends similarly that Regulation 14 (7) (b) is not applicable to the provision of lunches."

By leave of the court, the appellant filed an amended reply to the respondent's amended statement of case. In the amended reply the appellant challenged some of the averments of the respondent and in particular stated at paragraph 1 (e) as follows:

> "Further ....the Appellant says:
>
> "That such uniforms and lunches as it provides for its employees are provided pursuant to its agreement with the National Workers Union and the University and Allied Workers Union in respect of its unionised staff and pursuant to their contract of employment in respect of its non-unionised staff."

There were other averments which spoke to the issue of lunches and staff functions, but it is not necessary to outline these as by the time the hearing began, the respondent had made concessions which resulted in the question of the provision of uniforms being the only remaining substantive issue.

In paragraphs 2 and 3 of his amended reply the Appellant advanced new grounds of appeal as set out hereunder:

(i) The Appellant contends that the Respondent is not entitled to raise at the hearing of this Appeal REASONS (i) (ii) (iii) of paragraph 4 of his Amended Statement of Case which did not form part of his Decision and in respect of which the Appellant is bound by its Grounds of Objection .....

(ii) The Appellant joins issue with the Respondent as to his said REASONS set out in Paragraph 4 (i) (ii) (iii) of his Amended Statement of Case and contends as follows:-

(a) The uniforms and lunches provided by the Appellant to its employees are, the Appellant contends, provided pursuant to the latter's contracts of employment. They were required by the Appellant wholly for the purpose of making its own taxable supplies, within the meaning of paragraph (a) of the definition of "input tax" in section 2 of the General Consumption Tax Act. The Appellant is therefore, entitled to apply such input tax as a credit against the output tax charged by it on its own supplies for the relevant period.

(b) The input tax referred to at sub-paragraphs (g) to (k) inclusive of paragraph 1 hereof, was paid by the Appellant in respect of goods required by it wholly or mainly for the purpose of making its own taxable supplies and is therefore properly creditable against its output tax as aforesaid.

(c) It is not a precondition for the successful claim for an input tax credit pursuant to regulation 14

of the General Consumption Tax Regulation, that the sum paid should be both an "input tax" as defined and an "amount" specified in the said regulation. The Appellant contends that it is sufficient for the purpose of such claim if the sum paid falls within either category. The said sums claimed herein being "input tax" within the meaning of the aforementioned definition, are therefore capable of being offset against the Appellant's output tax for the reasons set out in (A) and (B) hereof.

(d) The Appellant cannot, in the light of the matters set out in paragraph 1 (e) and (f) hereof, carry on its business activity and make its own taxable supplies without the supply of it of the uniforms and lunches and the payment of the input tax thereon, the subject of this appeal. The Appellant therefore contends that the said input tax was not only tax on goods required by the Appellant wholly or mainly for the purpose of making taxable supplies within the meaning of the aforementioned definition, but also amounts stated on a tax invoice to the Appellant in respect of taxable supplies used by the Appellant in carrying out its taxable activity, within the meaning of regulation 14 (2) of the General Consumption Tax Regulations.

(iii) The Appellant contends that the Respondent is not entitled to the Relief Sought and in particular to the relief set out at item (c) of Paragraph 5 of his Amended Statement of Case in view of the admission made at paragaph 4 (iv) of his said Reasons.

The Appellant filed an affidavit sworn to by Rakesh Goswami, General Manager Finance and Administration of the Appellant company. In paragraphs 6,7,8,9 and 12 he

makes the following averments:

(6) 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".

(7) That pursuant to the Heads of Agreement made in 1994 between the Appellent 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 unionised staff. A copy of the said Heads of Agreement marked "**RG1**" 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.

(8) 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.

(9) 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.

(12) 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.

At this point it is useful to say something about the nature of General Consumption Tax, so as to place the issues that separate the parties in their proper perspective.

The Nature of General Consumption Tax (G.C.T.)

General Consumption Tax is a value added tax. A similar tax, value added tax, (V.A.T.) was introduced in Great Britain by the Finance Act 1973, which was part of the preparation for that country to enter the Common Market. In 1985, New Zealand enacted The Goods and Services Tax Act 1985. The tax thus imposed is commonly called G.S.T. The wording of much of the British Act is different from our G.C.T. Act, hence British cases must be referred to with great caution.

On the other hand our Act owes something to the New Zealand legislation particularly in the concept of any definition of "taxable activity" in contrast to the English "business".

General Consumption Tax is a broadly based consumption tax imposed under the Act, on the supply of goods and services in Jamaica, and on goods imported on or after 22nd October, 1991. Generally the tax is levied at the standard rate 15% (increased from the initial figure 10%) but some supplies are taxed at a nil rate (zero rated - Section 24

and Part 11 of the First Schedule) and a number of specified supplies are exempt from tax (Section 25 and the Third Schedule).

Goods are defined in Section 2 (1) thus:

> "Goods means all kinds of property other than real property, money securities or choses in action."

Section 2 (1) also states that:

> '"services" means the matters specified in the Fourth Schedule."'

The Fourth Schedule specifies a number of items which need not detain us except to mention that paragraph (d) thereof provides that:

> "The supply, other than the sale of real property, of anything for a consideration which is not a supply goods, shall be regarded as a supply of services."

It is apparent therefore that all commodities, except those such as money and real property exempted in the definitions given above, are covered by the Act, either as taxable, zerorated or exempt supplies

It is important to note that General Consumption Tax is not a tax on business profits or turnover, but is a tax on consumption. The philosophy behind it is that ultimately the tax is borne by the end user or consumer. Tax is paid at each step along the chain of ownership, until the goods or services reach the end user. In this way the tax is "collected" by the registered taxpayer who makes the supply and makes returns to the Revenue.

In **King v Bennetts** (1994) 16 N.Z.T.C. 11,370 at page 11, 372, McKay J. in The New Zealand Court of Appeal gave the following analysis of the similar tax in that country. He said:

> "Registered persons (registered taxpayers)

> must pay tax on all sales of goods or services, but are entitled to add it to the price. Such persons can obtain refunds of the G.S.T. paid by them on their own purchases from registered suppliers. This effectively means that each person through whose hands a product passes will in the end pay tax only on the added value, with the total tax being paid in the end by the ultimate consumer."

In this way, Registered taxpayers account to the Revenue for the General Consumption Act they have collected and claim a credit for General Consumption Act which they have paid. By this credit offset system only a net figure is returned by the registered taxpayers. This net figure is arrived at by deducting the General Consumption Tax component in supplies made to the registered taxpayer (input tax) from the General Consumption Tax component in supplies made by the registered taxpayer (out put tax).

The Issues to be Decided

(a) **A Procedural Point**

1. Whether the respondent having conceded that the reasons given earlier for his decision are wrong, should be permitted on appeal to argue new grounds for upholding his decision.

(b) **The Substantive Debate**

2. Whether the tax charged to the Appellant on items used in providing uniforms for its staff falls within the definition of 'input tax'.

3. Whether the appellant is entitled to a credit of input tax, in respect of the uniforms mentioned above, as provided for by Regulation 14 of the General Consumption Act Regulations.

I shall now summarize the arguments by which learned counsel addressed these issues, and I hope that in doing so I do no injustice to their arguments.

The Submissions On Behalf of the Appellant

On the Procedural Point

The respondent should not be allowed to argue on appeal new reasons in support of his decision, as Section 41 (3) provides that an appeal shall be limited to the grounds stated in the notice of objection, unless the Court should permit an amendment to the grounds.

Further, Rule 13, of the Revenue Court Rules states that subject to the Courts power of amendment "it shall not be competent on the hearing of an appeal, for the appellant or the respondent to rely upon any facts not set out in the Notice of Appeal, Statement of Case or Reply as the case may be."

(b) **The Substantive Debate**

The word "require" used in the definition of "input tax" is not defined in the General Consumption Act. Hence one must look to definitions in dictionaries, and its interpretation in various cases. Both sources distinguish between two possible meanings, Firstly necessarily and absolutely required, and secondly, required as a matter of convenience and practical operation.

Irrespective of which definition the court accepts, the Appellant has fulfilled the necessary criteria for a credit of input tax. This was so in the light of the uncontroverted evidence of Mr. Goswani on affidavit quoted above.

The following authorities elucidate the matter:

> Words and Phrases Legally Defined 3rd Edition Vol 4. pages 66 to 69 inclusive
>
> Edyvane V Donnelly, (1946) N.Z.L.R. 263.
>
> Smith (formerly Westwood) v National Coal Board [1967] 2 All ER 593 (H.L.)

As Mr. Goswani's evidence shows, for both unionised staff and non-unionised staff uniforms are a part of their remuneration.

The court is entitled to take judicial notice of the fact that in the industrial climate in Jamaica, staff will not work if they are not supplied with uniforms to which they are entitled.

The uniforms are therefore, required wholly for the purpose of making taxable supplies, the appellant's taxable activity being the making of fine rums, spirits and wines.

Contrary to the respondent's contention the sum claimed by a registered tax payer as a credit does not have to be both input tax and another amount specified in regulation 14.

On the issue of use, where the legislative does not specify the goods or services which are deemed to be used for the purpose of the business it is necessary to ascertain the tax payer's intention in acquiring the goods or services supplied - De Voil, Indirect Tax Service, Volume 2. paragraph V 3. 406.

Where the association between expenditure incurred and business carried on is not clear, then the test applied is a subjective one - Ian Flocton Development Ltd. v C. & E. Comrs [1987] S.T.C. 394, Page 14, Paragraph 8.

In determining the question of use of the supplies, the test is the "business purpose" not the business benefit.

Expenditure incurred wholly or mainly in carrying out the tax payer's business activity does not lose its character as such, merely because it may produce an incidential benefit of a personal non- business kind.

Input tax credit has been allowed in a number of English Cases in respect of items of clothing purchased by tax payers.

The following are examples:

Hill & Mansell (a firm) v C. & E. Comrs. [1987] V.A.T. Decision 2379 unreported (replacement of clothing damaged while working in retail shop).

Alexander v C. & E. Commissioners V.A.T. T.R. 107 (barrister's clothing).

Sisson v C. & E. Commissioners [1981] V.A.T. Decision 1056 unreported - (a mink coat)

Other cases in which it was decided that expenditure was for the purposes of a business are:

Customs & Excise Commissioner v British Rail [1976] 3 All E.R. 100.

Bentley, Stokes & Lowies v Benson **33** T.C. 491

Customs Exercise Commissioners vs Redrow [1996] S.T.C. 365

Ernst & Young v Commissioners of C. & E.
London V.A.T. Tribunal case 15100. 21 July, 1997

The Submissions on Behalf of the Respondent

On the Procedural Point

A taxpayer's objection precedes the decision of the Commissioner and therefore cannot be based on the Commissioner's decision.

By rule 10 the respondent is required to set out in his statement of case all "allegations of fact and points of law or other reasons upon which he intends to rely."

The respondent's decision is not a pleading.

The appellant has the opportunity and did exercise the option to have its Notice of Appeal amended to meet the new reasons given by the respondent, and in fact the appellant also filed a reply.

On The Substantive Debate

The decision in **Ian Flocton Developments Ltd. v C. & E. Commissioners** (Supra) is distinguishable being based on a different statutory provision.

The court should interpret the word "require" in the definition of input tax as "lay down as inperative; need, depend for success, be necessary" in accordance with the Concise Oxford Dictionary, Sixth Edition.

The court should give meaning to every word in the definition. In this regard the following cases are instructive and suggest that the appropriate meaning of "require" in this context is "are necessary".

Gibbon v Phillips [1894] 64 L.J.M.C. 42

Demerara Electric Company v I.R.C. 3 W.I.R. 448

Morgan v Tate & Lyle Ltd. [1955] A.C. 21

Ward & Co. Ltd., v Taxes Commissioner [1923] AC145. (P.C.)

Fawcett Properties Ltd v Buckingham C.C. [1960] 3 All ER. 503.

There is no direct requirement for uniforms for workers (whom the appellant concedes are clerical workers) in terms of the statutory definition, so as to render expenditure on them "input tax".

The uniforms in this case which are not protective clothing cannot be said to be goods required wholly or mainly for the purpose of making taxable supplies. There must be a direct purposive link between the goods and the making of taxable supplies.

If the court finds that the regulation varies the definition of input tax in any way, it must give way to the statutory definition - Ex parte Davis. In re Davis Vol V11 Ch Appeals 526, Macfisheris (Wholesale & Retail) Ltd v Coventy Corporation [1957] 3 All E.R. 299.

Directives of the European Community prescribe a particular treatment of legal interpretation in member states - [1990] All E.R. Annual Review page 107. This means that English cases should be viewed with caution.

The Reply on Behalf of the Appellant

Regulation 14 did not provide that in order to qualify as input tax an item should be both input tax as defined in section 2 of the Act and an amount specified in the regulation. On the contrary it meant that an item would qualify as input tax under either head. The provisions are in the alternative.

The Court's Analysis and Conclusion

(1). **The Procedural Point**

As noted earlier, Mrs Hudson-Phillips submitted that having conceded that the basis of the respondent's decision was wrong it is not open to counsel for the respondent to offer new reasons as to why his decision should be affirmed on appeal.

This submission was made before the judgement of this court in Revenue Court Appeal No. 2 of 1997 Real Resorts Limited v The Commissioner of General Consumption Tax, (unreported) delivered on the 18th December, 1998. In that case the identical argument was rejected. In doing so the court relied inter alia on the dictum of Denning L.J. as he then was, in Erington v Erington [1952] 1KB290 at 300, where he said:

> "It is always open to a respondent to support the judgement on any ground."

The court also referred to Property Holdings Co. Ltd. v Clark [1948] 1 KB 630, and Bostel Bus. Ltd. v Hurlock [1949] 1KB74. That is sufficient to dispose of the appellant's arguments on this point.

The Substantive Issues

(a). Whether the tax charged to the appellant on items used in providing uniforms for its staff falls within the definition of 'input tax' and

(b). Whether the appellant is entitled to a credit of input tax, in respect of the uniforms mentioned above, as provided by Regulation 14 of the General Consumption Tax Regulation.

I shall deal with both points together.

Section 2 (1) of the Act, defines input tax so far as it is relevant to this case, 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 (emphasis mine).

Both sides are agreed that the word "require" is capable of two main meanings - in one sense it speaks to something that is mandatory, another something discretionary or merely desirable.

A primary guiding principle in interpreting this subsection and indeed any enactment must be that the interpreter must first seek to ascertain the ordinary meaning of the words used.

The learned editor of Halsburys Laws of England Volume 36, 4th Edition, paragraph 585 puts it this way:

> "If there is nothing to modify, nothing to alter, nothing to qualify the language which a statute contains, the words and sentences must be construed in their ordinary and natural meaning."

And Lord Reid expressed the same sentiments in McCormick v Horsepower Limited [1981] 1 W.L.R. 1266 at 1273. He said:

> "In determing the meaning of any word or phrase in a statute the first question

> to ask is always what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase."

In his book Statutory Interpretation, 2nd edition 1987 page 1, Sir Rupert Cross underlined the cardinal importance and logical underpinning of this rule in these words, which I respectfully adopt:

> The essential rule is that words should generally be given the meaning which the normal speaker of the English Language would understand them to bear in their context at the time when they were used. It would be difficult to over estimate the importance of this rule because the vast majority of statutes never come before the courts for interpretation. If it were not a known fact that, in the ordinary case in which the normal user of the English Language would have no doubt about the meaning of the statutory words, the courts will give those their ordinary meaning, it would be impossible for lawyers and other experts to act and advise on the statute in question with confidence."

Another important rule of statutory interpretation is that an enactment must always be construed in the light of the surrounding words. They cannot be read in isolation. The

dictum of Stamp J.in Bourne v Norwick Crematorium Limited [1967] 1 W.L.R. 691 at 696 are appropriate:

> "English words derive colour from those which surround them. Sentences are not mere collections of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put back into the sentence with the meaning which you have assigned to them as separate words..."

Interestingly both sides in considering the meaning of the word "require" started out by giving definitions from a dictionary in terms which described a situation of necessity, demand and insisting upon; and the sense of wishing to have or desiring was given as a secondary meaning. 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 fulfilment." - 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 which is more often than not used in the sense of what is demanded or necessary.

The next point to be decided is whether the uniforms are required wholly or mainly for the purpose of the appellant making taxable supplies.

In seeking to persuade the court as to the correct test to be used to determine this issue, both counsel cited the case of Ian Flocton Development Limited v Commissioners of C & E (supra), a decision of the Queens Bench Division of the English High Court. The following is a summary of the case in Tolley's V.A.T. Cases 1997 page 439.

> "Company manufacturing plastic storage tanks. A company which manufactured plastic storage tanks reclaimed input tax on the training and upkeep of a racehorse. The Commissioners issued an assessment to recover the tax and the company appealed, contending that it had purchased the horse for promotional purposes. The principal director gave evidence that this was the sole object which he had in mind when he decided to buy the horse. The tribunal dismissed the appeal, holding that it should apply an objective test and that the average businessman would not have considered that the purchase of the horse would have been in the interest, of the company [MAN/84/148, July 1985 (1904). The QB allowed the company's appeal against this decision, holding that the tribunal had been wrong to substitute an objective test for the test of what was actually in the mind of the witness at the time of the expenditure. On the facts found by the tribunal, the company's sole object in buying the horse was to promote its business. Stuart-Smith J observed that this finding was a surprising one', but held that it was a finding of fact with which the court could not interfere.

Two observations have to be made, Firstly, the wording of the English Statute is different from our General Consumption Act. The English Provision Section 14 (3) of the value Added Tax 1983 states:

> "Input tax, on relation to the taxable person means....."
>
> (a). tax on the supply to him of any goods or services... being ... goods or services used or to be used for the purpose of any business carried on or to be carried on by him... (emphasis mine)

Secondly, that decision conflicts with the established case law relating to direct taxation, where the House of Lords held that the conscious motive of the taxpayer at the time of the expenditure is not conclusive, (See the judgement of Lord Brightman in Mallalieu v Drummond [1983] S.T.C. 665 [1983] 2 All E.R. 1095) and, certainly, it would be more desirable and more logical to have the same test for both branches of tax law.

The facts of the case are as follows:-

> "The taxpayer was a barrister who was obliged, by the rules of her profession, to wear black clothes when in court. It was also necessary for her to wear a wig and gown but no argument was raised in the case on these items. The short question was whether she was entitled, in computing the profits of her profession, to deduct sums she had spent on the replacement, laundering and cleaning of the clothes worn in court. This in turn depended on whether such expenditure was incurred ' wholly and exclusively for the purposes of [her] profession' within TA 1970, s 130 (a).

The commissioners found that when the taxpayer spent the money in this way she had a professional objective in mind, viz to enable her to be properly clothed during the time she was on her way to chambers or to court and while she was thereafter engaged in her professional activity. It seems to have been accepted on all sides that she would have not purchased these clothes for her own private use. Indeed, the Commissioners expressely found that the preservation of warmth and decency was not a consideration which crossed her mind when she bought the disputed items.

Dispite this clear finding of primary fact, the Commissioners held that there was a secondary purpose in the purchase in that they were needed to keep her warm and clad during that part of the day when she was pursuing her career; it followed that the expenditure had a dual purpose and that therefore no deduction could be claimed.

Slade J. at first instance, and the Court of Appeal, agreed in reversing the Commissioners. In view of the findings of primary fact the Commissioners were not justified, in their view, in inferring the duality of expenditure. Thus the matter came to the House of Lords.

The decision reached by Lord Brightman, who gave the opinion of the majority (Lord Elwyn-Jones dissenting) was that the original decision of the

> Commissioners should be upheld because, while the taxpayer may well only have had the professional purpose in her conscious mind, it was in escapable that another object though not a conscious motive, was the provision of the clothing that she needed as a human being.- ie the need to wear clothes to travel to work and wear while at work.. He rejected the notion that the object of the taxpayer was limited to the particular conscious motive in mind at the moment of expenditure. He added that he would have found it impossible to reach any other conclusion.

Thirdly, Ian Flocton's case has not been followed in Australia or New Zealand. This is significant because the definition of 'input tax' and 'taxable activity' in the New Zealand Goods and Services Tax Act is more similar to ours than the English Act.

The New Zealand General Consumption Tax defines input tax in this way:

> "Input Tax in relation to a registered person, means:
>
> (a). Tax charged under Section 8 (1) of this Act on the supply of goods and Services made to that person
>
> (b).....
>
> (c).....
>
> being in any case goods and services acquired for the principal purpose of making taxable supplies.

As pointed out earlier the New Zealand Act uses the phrase "taxable activity" rather than "business" which occurs in the English Act. The definition of "taxable activity" in the New Zealand Statute which predates our stutute is remarkably similar.

It reads thus:

> "6 (1). For the purposes of this Act, the term 'taxable activity' means:-
>
> (A). Any activity which is carried on continuously or regularly by any person whether or not for a pecuniary profit and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business trade, manufacture, profession, vocation association or club."
> (emphasis added)

The words emphasized also appear in our General Consumption Tax Act except that the portion speaking of a "business trade" etc. appears in the first three lines of our statute, and our statute omits the word manufacture!

I am of opinion therefore that cases from New Zealand should prove more helpful than cases from the United Kingdom.

In case M53 (1990) 12 NZTC 2312 cited at paragraph 15003 New Zealand Goods and Services Tax Guide (NZGSTG) it was held that the test "is a matter of weighing all the relevant evidence and deciding according to the particular circumstances of any one case". In case M106 (1990) 12 NZTC 2764 at paragraph 2679 cited in NZGSTG (supra) at page 15004, it was held that the test is an objective one. I adopt this principle.

I now turn to consider those cases cited by Mrs. Hudson-Phillips regarding claims for deduction of input tax for clothing under English Legislation. The particulars of each case are taken from Tolley's V.A.T. Cases 1997 Edition. I shall also refer to some other cases.

No. 31.85 E.M. Alexander [1976] V.A.T.T.R. 107 London June 1976 [251].

> "Formal clothing purchased by barrister whether input tax dedutible. A barrister was admitted to Chambers in 1974. He purchased two dark three-piece suits, three white tunic shirts, twelve detachable collars, and two pairs of black shoes, for wear in court. He reclaimed input tax on these items, and also on several pairs of black socks and a suitcase. The Commissioners issued an assessment to recover the tax, considering that the clothing had not been purchased exclusively for professional purposes, since it could also be worn privately. The barrister appealed, contending that the Bar Council required such dress to be worn in court, and that before becoming a barrister he had habitually worn two-piece suits, coloured socks and brown shoes, which were not acceptable for court wear. The tribunal allowed his appeal in part, holding that the three tunic shirts and detachable collars, and one of the two three-piece suits, could be regarded as having been purchased for professional purposes. However, the tax on the second suit and on the shoes, socks and suitcase was not allowable.

R.A. Sisson, Lon/80/310, March 1981 (1056).

> Fur coat purchased by authoress. An author and scriptwriter decided to travel to New York in 1979 to attempt to gain a lucrative literary contract. Shortly before her departure she bought a mink coat for £4,950. She reclaimed the VAT on this as input tax. The Commissioners issued an assessment to recover the tax, considering that the coat had been purchased for private purposes rather than for professional purposes. She appealed, contending that her main purpose in buying the coat had been to impress the people that she would be meeting in New York and thus to improve her chances of gaining the literary contract. The tribunal held that the coat had been partly purchased for professional purposes and partly for private purposes, so that the cost should be apportioned. The appeal was adjourned in the hope that the parties could agree an apportionment. R.A. Sisson, LON/80/310, March 1981 (1056). (Note. There was no further public hearing of the appeal).

Hill & Mansell (a firm) v C & E Commissioners [1987] VAT Decision 2379 was cited by Mrs. Hudson-Phillips as a case in which a claim for deduction of input tax was allowed. But this is incorrect and probably arose out of a typographical error. The summary in Tolley's VAT cases is as set out hereunder:

> Retailers-input tax reclaimed on suits worn while working. In the case noted at 1.6 AGENTS, two retailers had claimed input tax on the cost of suits which they wore while working. The tribunal held that the tax was not deductible. F.K. Hill & S. F. Mansell (t/a FK Hill & Co),

Lon/86/472, May 1987 (2379).

There are other cases in which claims were disallowed under the English Legislation which is not as stringent as ours.

> Art Consultant - whether clothing purchased for business purposes. An art consultant reclaimed input tax on the purchase of items of clothing costing more than £8,500. The Commissioner issued an assessment to recover the tax, considering that the clothing had not been purchased for the purposes of her business. She appealed, contending that she had purchased the clothing in question ' to cultivate a professional image drawing prospective clients' attention to herself. The Tribunal dismissed her appeal, holding that she had 'failed to establish that the expenditure... was expenditure incurred for the purposes of her business, within (VATA 1994, s 24 (1).' PJ Stone Ltd, 31.92 below, applied. Alexander, 31.85 above, was distinguished since the clothing there had been purchased to comply with the rules of the Bar Council. Sisson, 31.86 above, was distunguished since the fur coat there had been found to have been purchased for the purpose of attempting to obtain one specific contract. Bridget F. Brown LON/91/1681, May 1991 (6552).

> Architect - input tax reclaimed on suits worn while working. An architect reclaimed input tax on the cost of suits which he wore while working. The Commissioners issued an assessment to recover the tax and the tribunal dismissed the architect's appeal, applying Hill & Mansell, 31.88 above. W. Richards, MAN/ 92/324, January 1994 (11674).

> Clothing purchased by company for wear by principal director-whether for purpose of company's business. A company carried on a management consultancy. It purchased a number of items of clothing and jewellery to be worn by the director. These items included a pair of black leather boots and a sapphire mink jacket. The company reclaimed input tax on these items and the commissioners issued an assessment to recover the tax, considering that the expenditure has not been incurred for the purpose of the company's business. The company appealed, contending that the clothing served the purpose of the company's business since, when its director attended meetings, she should be dressed in such a way that people would have confidence in her judgement'. The tribunal dismissed the appeal, holding that the company had not established that the clothing and jewellery in question had been purchased for business purposes. PF Stone Ltd, Lon/86/396, November 1986 (2241).

Under the English legislation as the learned editor of DeVoil on indirect taxation points out at V. 309:

> "..the fact that his business benefits from the goods or services does not necessarily mean that they were purchased, acquired or imported for the purposes of that business. There must be a real nexus between the matter in relation to which expenditure has been incurred and the business itself. The fact that the business benefits from the expenditure is insufficient to create such a nexus..."

In the same paragraph the learned editors declare that "the nexus must be directly referable to the nature of the business". C & E Commissioners v Rosen [1994] S.T.C. 228."

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-s.1 (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. Judgement of the Court of Appeal affirmed.

Viscount Cave giving the judgement of the Court said at page 149..

> "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 stutute, but its importance lies in the fact that the court interpreted the wording of the stutute 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 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.

There is no real nexus, no nexus 'directly referable' to the nature 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.

But Mrs. Hudson-Phillips had two strings to her bow. She argued that a registered taxpayer would be entitled to a credit once he could produce an invoice issued to him in respect of taxable supplies made to him during a taxable period, and that the credit would be in the amount stated in the invoice. This she said is the effect of regulation 14 (1).

Mrs. Lee on the other hand submitted that regulation 14 was merely dealing with the issue of the quantum of credit obtainable in respect of tax paid which had already qualified as input tax as defined in section 2 of the act.

Paragraphs 1 and 2 of Regulation 14 reads as follows:'

> "14-(1)....Subject to paragraphs (2), (3), (4), (5), (6) and (6a), a registered taxpayer shall, in respect of a taxable period, be entitled to claim as a credit any input tax payable by him during that period and any other amounts specified in this regulation.
>
> (2). For the purposes of paragraph (1), the input tax in relation to which a credit may be claimed shall be the sum of-
>
> (a). Any amount stated as tax on a tax invoice issued to the registered taxpayer in respect of taxable supplies made to him during a taxable period; and
>
> (b). Any input tax paid by that registered taxpayer on the importation of taxable supplies into Jamaica, being supplies used by the registered taxpayer in carrying out his taxable activity. (emphasis mine).
>
> Section 63 (1) of the Act provides thus:
>
> 63.-(1) The Minister may make regulations generally for giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing, may make regulations-

(a) in respect of the time at which a taxable supply is made;

(b) for the remittance of the whole or part of the tax chargeable on the importation of any taxable supply which is to be re-exported;

(c) prescribing the method of ascertaining the cost of erection or installation of any taxable supply where such cost is included in the price of such supply;

(d) prescribing the method of collection and remittance of tax and any condition affecting such collection or remittance;

(e) prescribing the circumstances in which refund of tax may be given and the terms and conditions attached thereto;

(f) prescribing the manner of the keeping of accounts, books, documents and records;

(g) prescribing the treatment of a taxable supply where there is a change in the rate of tax;

(h) for the prevention of fraud on the revenue;

(i) in respect of the circumstances in which the payment of tax may be deferred;

(j) in respect of the computation of input tax credit in relation to prescribed goods and goods specified in Part I of the First Schedule;

(k) prescribing the circumstances in which a registered taxpayer may be given credit against output tax; or

(l) prescribing any other matter required by this Act to be prescribed.

Mr Hudson Phillips' contention is wrong. Paragraph 1 of Regulation 14 provides that a registered taxpayer may claim us a credit "any input tax payable by him .... and any other amounts specified in this regulation."

All the other paragraphs speak to the quantum of such claims, but the claims must satisfy the criteria of being input tax, because for example paragraph 2 reads:

"For the purposes of paragraph 1 the input tax in relation to which a credit may be claimed should be the sum of ....." and the other sub-paragraphs contain examples of input tax arising under the first and second halves of the definition.

All these other sub-paragraphs expressely state that the claim is for input tax except paragraph 5 (b) (c) and (d). Those sub-paragraphs deal with the tax on motor vehicles - sub paragraph (b); spirits, bears, wines, etc. - paragraph (c); and the utilization of services - paragraph (d). The percentages and other amounts indicated in paragraphs 14 (2) - (12) are what is meant by the words "any other amount specified in this regulation" in paragraph 14 (1).

None of these concern the instant case.

Finally, I agree with the Lee's submission that to uphold this appeal would be to ask taxpayers to pay for the clothing of the appellant's employees.
Lord Brightman in Mallalieu's case (supra) said much the same thing. He said that, that case raised a wider issue which he described at [1983] 2 All ER at 1102, [1983] STC at 672 as

> 'a far wider and more fundamental point, namely the right of any self-employed person to maintain at the expense of his gross income and therefor partly at the expense of the general body of taxpayers,

> a wardrobe of everyday clothes which are reserve for work.."

I do not agree with Mrs Hudson Phillips' suggestion that in view of the respondent's admission of an error in his reasons for decision he should be made to pay the cost of this appeal.

I am of opinion that he should not receive all his costs in view of the error in his reasons.

The decision of the court is: Appeal dismissed in part and allowed in part.

The appeal is allowed as regards the claims for credits in respect of staff lunches and staff entertainment. The appeal is dismissed in respect of the claim for input tax credit in relation to the provision of uniforms.

The Appellant shall pay one half of the respondent's costs of this appeal.