

In the Supreme Court

The Full Court

Before: Smith, C.J., Wright and Morgan, JJ.

R. v. Collector General and the Licensing Authority
for the Central Area

Ex parte Carrol Lawrence

Gordon Robinson for Applicant

R. Langrin and W. Wilkins for Respondents.

25 October 1982

SMITH, C.J. :

In these proceedings the applicant sought an order of mandamus to compel the respondents, or either of them, to issue a fresh motor vehicle licence for the applicant's motor car with registration number LN 7517 under the provisions of s. 12(7) of the Road Traffic Act. The application was granted.

The evidence adduced before us showed that the applicant's motor car was owned originally by Central Rent-a-Car Ltd. (the company), who bought it on or about December 23, 1977 without payment of the sales tax which a purchaser of prescribed goods is required to pay by virtue of the provisions of s. 3 of the Retail Sales Tax Act. The purchase by the company was exempt from sales tax because of the provisions of paragraph 1(1)(a) of Part II of the Schedule to the Act, which wholly exempts "Motor cars which the Collector-General is satisfied are purchased solely for use by a member of an approved U-Drive Association." The Collector-General was, apparently, so satisfied in this case but he was entitled by the same provisions to impose terms and conditions on the exemption and the conditions which he imposed were that the motor car should not, within eighteen months next after the purchase, be used "except by or on behalf of the company while the company is a member of an approved U-Drive Association. "

Section 8 of the Retail Sales Tax Act provides as follows :

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- "(1) Where prescribed goods have been purchased exempt from the tax imposed by this Act the goods shall not during the three years next after the purchase be put to a taxable use, unless the purchaser prior to such change of use pays to the Collector-General the tax imposed by this Act on the fair value of the goods at the time of the purchase or unless the terms of the exemption expressly excludes the operation of this section.
- (2) A person who contravenes the provisions of sub-section (1) shall be guilty of an offence against this Act. "

It is assumed that the Collector-General had authority to vary the period stated in subsection (1) from three years to eighteen months, as he did in this case.

On or about May 31, 1979 the company transferred its ownership of the motor car to a Mr. Michael Archer who, on or about July 9, 1979, sold it to the applicant. The requisite transfer documents were lodged with the Collector of Taxes for Saint Andrew but neither Mr. Archer nor the applicant received a registration book, because of a new system which had been instituted. Instead, each was issued by the office of the Collector of Taxes with a document which was a temporary authority to operate the motor car until registration books became available. In the case of the applicant, this authority was renewed from time to time on expiration. When the applicant went to the office of the Collector of Taxes in August, 1980 to renew the authority his application to do so was refused.

By selling the motor car to Mr. Archer before the expiration of eighteen months from its purchase, the company was in breach of the conditions imposed by the Collector-General and, by s. 8 of the Act, became liable to be prosecuted for a criminal offence and to pay the tax exempted. There is no evidence to show what steps, if any, were taken to prosecute the company and to collect the tax from it. In refusing to renew the applicant's temporary authority the Collector of Taxes was acting on the instructions of the Collector-General. The applicant deposed that when he visited the Collector-General to inquire about the refusal he was told that unless (the tax) was paid either by him or by the company he (the Collector-General) 'would not be issuing a fresh licence for the motor vehicle and he may even seize the motor vehicle.'

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It was submitted on behalf of the applicant that there is a public duty imposed by s. 12(7) of the Road Traffic Act on a Licensing Authority or its delegate, a Collector of Taxes, to issue a fresh licence to the owner of a motor vehicle upon application, the production of a certificate of fitness and the payment of the appropriate duty and that the Collector of Taxes for Saint Andrew wrongfully exercised such discretion as he has in refusing to grant a fresh licence or temporary authority to the applicant in the circumstances described above. For the Collector-General, it was contended that, by the provisions of s. 3 of the Act, the payment of the sales tax was a condition precedent to the motor car being put to a taxable use and so the issuance of a fresh licence or a temporary authority can lawfully be withheld until the sales tax is paid, whether by the company or the applicant. It was argued that to compel the performance of the duty by mandamus would be to compel the Collector of Taxes "to contravene the very statute which he has a duty to obey, viz., the Retail Sales Tax Act."

Learned counsel for the respondents, Mr. Langrin, agreed, arguendo, that the effect of his contention was that the sales tax "ran with the motor car" in the same way as a covenant can be made to run with land; so that the tax becomes binding on the motor car and can be demanded from the owner for the time being. It was not contended that the sale to the applicant, per se, made him liable for sales tax; indeed, he bought after the eighteen months period had expired. Evidence was adduced on behalf of the Collector-General that neither the company nor Mr. Archer disclosed that the sales tax had not been paid when they transferred ownership of the motor car. There was, however, no evidence that Mr. Archer had this knowledge and the applicant has deposed that he did not know that any tax or duty was owed on the motor car.

In my opinion, the contention for the Collector General is misconceived. In the first place, the Collector-General, to whom sales tax is payable, cannot lawfully authorise or direct the Collector of Taxes to make the issuance of a licence under the Road Traffic Act subject to the payment of unpaid sales tax on a motor car. As provided in s. 7 of this Act, the Collector of Taxes is, in this respect, the delegate of /....

the Licensing Authority and is, therefore, subject only to the directions of that Authority. Secondly, in refusing to issue the temporary authority or a fresh licence to the applicant, the Collector of Taxes acted without lawful authority. Such discretion as he has was exercised for a reason which was bad in law (see Congreve v. Home Office, (1976) 1 All E.R. 697 at 709). The Retail Sales Tax Act does not prohibit or restrict the resale of prescribed goods on which the original purchaser has not paid sales tax. Nor does it make a subsequent purchaser liable to pay that tax. The only sanctions imposed by the Act, where exempted goods are put to taxable use in breach of imposed terms or conditions, are liability on the original purchaser to pay the sales tax from which the goods were exempt and a penalty for commission of a criminal offence.

For these reasons, the applicant was entitled to the judgment of the Court granting his application and the order he sought.

WRIGHT, J:

I agree.

MORGAN, J:

I agree.