

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 33/92

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

BETWEEN UNITED ESTATES LIMITED PLAINTIFF/APPELLANT
AND COMMISSIONER OF GENERAL CONSUMPTION TAX DEFENDANT/RESPONDENT

Allan Wood and Peter Depass for the appellant

William Alder for the respondent

30th June, 1st and 21st July, 1992

DOWNER, J.A.:

The single issue to be decided in this appeal is whether section 40(7) of the General Consumption Tax confers jurisdiction on the Revenue Court to hear an appeal from the appellant who is dissatisfied with the decision of the Commissioner.

Section 40(7), which came into force on 27th October, 1991, reads as follows:

"(7) Where any person is dissatisfied with a decision of the Commissioner (other than a decision relating to an assessment made on that person) that person may appeal to the Revenue Court within thirty days of the receipt of the decision and the Revenue Court may make such order as it thinks fit."

To understand the importance of these plain words, reference must be made to the Judicature (Revenue Court) Act which established the Revenue Court and by section 3(1) of that Act stipulated that the Court "shall have such jurisdiction and powers as may be conferred upon it by this Act or by any other

law." To grasp the appropriateness of extending the jurisdiction of the Court by section 40(7) of the General Consumption Act, it must be noted that section 97(1)(2) of the Constitution reads as follows:

"97.--(1) There shall be a Supreme Court for Jamaica which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law."

As for the status of the Revenue Court, it is in substance a part of the Supreme Court. This follows logically from 97(2) which reads:

" (2) The Judges of the Supreme Court shall be the Chief Justice, a Senior Puisne Judge and such number of other Puisne Judges as may be prescribed by Parliament."

When Parliament labels a court, the Revenue Court, and a Puisne Judge of the Supreme Court is prescribed to preside over it - the logic of the Constitution is that it is part of the Supreme Court. Section 6 of the Judicature (Revenue Court) Act recognises this and it is pertinent to quote it. It reads:

"6.--(1) The Judge of the Court shall be a Puisne Judge of the Supreme Court nominated by the Governor-General acting on the advice of the Judicial Service Commission, being a person appearing to that Commission to be versed in the law relating to income tax.

(2) The Judge shall, in relation to the Court, have, mutatis mutandis, all the rights, powers, immunities and privileges of a Puisne Judge of the Supreme Court."

It is against this background that Lord Diplock in Hinds v. The Queen (1975) 13 J.L.R. 262 at p. 273 - 274 said:

"Their Lordships accept that there is nothing in the Constitution to prohibit Parliament from establishing by an ordinary law a court under a new name, such as the 'Revenue Court', to exercise part of the jurisdiction that was being exercised by members of the higher judiciary or by members of the lower judiciary at the time when the Constitution came into force. To do so is merely to

"change the label to be attached to the capacity in which the persons appointed to be members of the new court exercise a jurisdiction previously exercised by the holders of one or other of the judicial offices named in Chapter VII of the Constitution. In their Lordships' view, however, it is the manifest intention of the Constitution that any person appointed to be a member of such a court should be appointed in the same manner and entitled to the same security of tenure as the holder of the judicial office named in Chapter VII of the Constitution which entitled him to exercise the corresponding jurisdiction at the time when the Constitution came into force."

The conclusion, therefore, that Parliament could create and extend the jurisdiction of the Revenue Court by any mode is correct. The Supreme Court (Pipon Schooles, C.J., Lumb and Vickers, JJ.) recognized, as Mr. Wood submitted, the absurdity of contending otherwise in Webster v. Bush 1 Stephen 68 - 69, when that Court in delivering judgment said:

"...It is, however, absurd to contend that when the right of appeal to a particular Court is expressly given by the statute that the Court should be permitted to say, **we** refuse to hear your appeal because, though the law has given you the right to appeal to us, it has not gone to say we may hear you.

The right to appeal to the Grand Court is given in clear and absolute language, and the implication is irresistible that the Grand Court shall have authority to entertain and deal with the matter the appellant is by law entitled to bring before it."

Why then did Marsh, J. in the Revenue Court refuse to hear the appellant's case on the merits on the ground that the Revenue Court lacked jurisdiction to hear and determine the appeal? The appeal was concerned with the decision of the Commissioner, that the appellant who was registered pursuant to Part VI of the Act which came into force on 27th July, 1991, was subject to General Consumption Tax for orange juice without additives. To answer this question, it is appropriate to set

out the learned judge's reasons which run thus:

"In my view it is a very short point.
S. 4 of the Revenue Court Act states:

'(1) The Revenue Court shall have jurisdiction to hear and determine any appeal, cause or matter brought to the Court under or pursuant to any of the enactments for the time being specified in the Schedule.'

That is the relevant provision. When one turns to the Schedule, the GCT Act deals with the matter at p. 82 which is based on S. 64:

'The enactments mentioned in the first column of the Appendix are amended in the manner respectively specified in the second column thereof.'

When one looks at the relevant portion of the Revenue Court Act only S. 41 of the GCT Act is referred to. No mention of S. 40(7). It seems to me that the issue before me is under S. 40. It also seems to me that the Appendix to the GCT Act ought to have included S. 40 as a provision to be included in the Revenue Court Act.

Until this is done, I have no jurisdiction to hear this Appeal."

When this judgment is analysed, it is patent that the learned judge ignored the provisions of section 3(1) of the Judicature (Revenue Court) Act - (The Act) and confined the Court's jurisdiction to the provisions of section 4. This section deals with the jurisdiction specified in the Schedule to the Act and the learned judge rightly recognized that section 41 of the General Consumption Act, as it appears in the Schedule, amends The Act. But he was wrong to side-step the full force and effect of section 3 of The Act.

Conclusion

It ought to be reiterated that it could never be correct to ignore section 3 of The Act and so deny the jurisdiction conferred by section 40(7) of the General Consumption

Act. So this Court, at the end of the hearing, set aside the order of Marsh, J., remitted the case to the Revenue Court and ordered that the respondent pay the taxed or agreed costs of this appeal to the appellant.

Rowe, P.:

I entirely agree.

Morgan, J.A.:

I agree.