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NZLR X

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.128/83

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BETWEEN AGRICULTURAL CORPORATION OF NEW ZEALAND (HOLDINGS) LIMITED a duly incorporate company having its registered office at Hamilton and carrying on business as Aerial Work Operators

Objector

A N D COMMISSIONER OF INLAND REVENUE

Commissioner

Hearing: 27 February 1984

Judgment: 29 February 1984

Counsel: B J Paterson for Objector
C Q M Almao for Commissioner

JUDGMENT OF BISSON J.

This is a Case Stated, pursuant to s.32 of the Income Tax Act 1954 and s.33 of the Income Tax Act 1976. The objector, formerly known as James Aviation Limited, is a duly incorporated limited liability company whose main activity is aerial topdressing, but has other activities which include aircraft sales. The objector sold aircraft and aircraft loaders overseas, the former in Pakistan and the latter in the Solomon Islands and Malaysia. In its Returns of Income for the years ended 31st October 1976, 1977 and 1978, the objector claimed export incentives on the sale of those assets. Following the disallowance of those claims and the objector's objection thereto being disallowed, the Commissioner was

required to state this case.

The opposing contentions of the objector on the one hand and the Commissioner on the other are stated in paragraphs 9 and 10 of the Case Stated as follows :

> "9. THE Objector contends that the Increased Export Incentives claimed in respect of the years ended the 31st October 1976 and the 31st October 1977 and the New Market Increase Export Incentives claimed in the years ended the 31st October 1977 and the 31st October 1978 are incentives to which the Objector is entitled under the provisions of Section 156 and 157 of the Income Tax Act 1976 in that the Objector is entitled under the Sections to the Incentives in respect of three Fletcher aircraft sold to Pakistan and two Agricultural aircraft loaders sold to Malaysia and the Solomon Islands.
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> 10. THE Commissioner contends that the aircraft sold by the Objector were not "export goods" for the purposes of sections 156 and 157 of the Income Tax Act 1976. The incentives made available by these sections are therefore not applicable to the said sales."

Mr Paterson, for the objector, called as a witness Mr T B McClunie, who at the material time was employed by the objector as its Assistant Engineering Manager. The objector had originally sought to extend its flying operations into Pakistan and had been partially successful in a tender for a spraying contract. This work did not proceed but it took one aircraft to Pakistan as a demonstrator for sales purposes and succeeded in selling three aircraft, being Fletcher FU24 300HP agricultural type of aircraft which it had owned and operated in the course of its business in New Zealand and which were then surplus to its requirements.

Mr McClunie produced in evidence two letters from the Secretary of Trade and Industry, one dated the 16th November 1977 approving new market status for the sale of

agricultural type aircraft in Pakistan, and the other dated the 5th May 1978 approving new market status for the sale of agricultural loaders in the Solomon Islands and Malaysia. These letters formed the basis of the claims for new market increase exports incentives in respect of the three aircraft and the two loaders. The loaders had also been used by the objector in the course of its operations in New Zealand.

Mr McClunie also produced from the Annual Accounts of James Aviation Limited, for the year ended the 31st October 1979, page 14 which showed the classifications of revenue earned by that company in the years 1975 to 1979 inclusive. The most substantial source of revenue were "Aerial Operations/Flying Charges" but there were also substantial receipts in respect of "Aircraft Sales" and substantially in excess of the figure of $133,150.00 being the proceeds of the sale of the three Fletcher aircraft to Pakistan. The sale of the loaders appeared under another heading. The total for Aircraft Sales included sales of aircraft in New Zealand and also in Australia, the objector being the New Zealand agent for "Beechcraft", "de Havilland" of Canada and "Hiller" helicopters of the United States of America. The company sold some new aircraft and some used aircraft, some sales involving the trade-in of aircraft. It had an Aircraft Sales Division with staff concerned solely with aircraft sales and distributorship. Mr McClunie said in cross-examination that the purpose of the company being in Pakistan was that it was trying to expand its activities internationally either as operators or in aircraft sales. Mr McClunie pointed

out that from time to time, because of fluctuations in the New Zealand agricultural economy, it had surplus aircraft in quite large numbers, and it was continually trying to sell these aircraft overseas for the purpose of smoothing-out the fluctuations in New Zealand. Obviously it would be difficult to sell aerial topdressing aircraft within New Zealand at a time when there was a downturn in aerial topdressing, due to a decline in the New Zealand agricultural economy. Mr McClunie also said that as part of its sales of aircraft business, it did not just sell off surplus aircraft but actually held in stock various aircraft for sale.

The claims are based on s.156 and 157 or the Income Tax Act 1976 as they stood prior to the 1978 Amendment. In s.156 (1) "Export goods" was defined as follows :

> "156.(1) For the purposes of this section - ... "Export goods" means goods exported from New Zealand by a taxpayer, being goods -
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> (a) Which were sold or disposed of by the taxpayer; and
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> (b) Of which the taxpayer was the owner at the time of the sale or disposal; and
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> (c) Which are not non-qualifying goods:"

To obtain an increased export incentive under s.156 in respect of export goods, it was necessary to come within the provisions of subsection (5), the relevant parts of which in this case are as follows :

"156.(5) Subject to this section, where, in relation to any income year (being any income year ending on or before the terminating date) and to a taxpayer carrying on in New Zealand any business or businesses in which goods are sold or otherwise disposed of, -

(a) There is an increase in export sales for the income year; or

(b) .. ..

a deduction shall be allowed under this section in calculating the assessable income derived by the taxpayer in the income year from that business or, as the case may be, those businesses, of the greater of the following amounts :

(c) An amount equal to 25 per cent of any increase in export sales for that income year:

(d) .. .. "

It is not disputed that the aircraft and loaders were goods which were exported from New Zealand and sold by the objector and of which the objector was the owner at the time of their sale and which were not non-qualifying goods. The objector contends that the aircraft and loaders are therefore "export goods". The Commissioner says they are not "export goods" because those words are limited to the sale of trading stock and do not apply to the realization of capital assets. The question for the Court is one of construction. Mr Paterson referred to four of the rules of interpretation of revenue statutes as summarized by Lord Donovan in Mangin v Commissioner of Inland Revenue (1971) NZLR 591 at p.594. The fourth rule is :

"... the history of an enactment and the reasons which led to its being passed may be used as an aid to its construction."

Mr Paterson then referred to Commissioner of Inland Revenue v. International Importing Limited (1972) NZLR 1095, in which

s.129B of the Land and Income Tax Act 1954, the forerunner of s.156 of the Income Tax Act 1976, was held to be not a fiscal provision in the sense in which the cases on the construction of statutes use that term. At p.1096 in the judgment of Turner P., he said :

> "Section 129B is not a fiscal provision in the sense in which the cases on the construction of statutes use that term; and I think that it is not only permissible, but proper, in construing this particular section, to attempt to discern the purpose underlying the legislation, and then to give the section the 'fair, large, and liberal interpretation' which will best bring about the result which the Legislature desired, viz. the encouragement of taxpayers to build up the foreign exchange reserves of the Reserve Bank by exporting more goods than they formerly exported."

Mr Paterson submitted that the objector's overseas sales clearly had the effect of building up foreign exchange reserves, and this results whether by selling capital assets or selling stock-in-trade. Mr Paterson submitted that the literal meaning of the words "export goods" ensured the attainment of the object of the legislation, namely the building up of foreign exchange reserves. He submitted that the other basic requirement was that the objector was "carrying on in New Zealand any business or businesses in which goods are sold or otherwise disposed of", and submitted that the evidence of Mr McClunie clearly established that fact.

With regard to the amounts disallowed for new maket increased export incentives, claimed under s.157 of the Act, as the definitions under that section are similar to those in s.156, Mr Paterson conceded that if the Court found against the objector under s.156 it must necessarily find against the objector under s.157. The operative part

of s.157 is subsection (4), which states :

"157. (4) Where a taxpayer carrying on in New Zealand any business or businesses in which goods are sold or otherwise disposed of has, on or after the 1st day of April 1975, sold or otherwise disposed of new market export goods, the taxpayer shall, on production to the Commissioner of the certificate given by the Secretary in relation to those new market export goods, be entitled, in addition to any deduction under section 156 of this Act, in calculating the assessable income derived by him from that business or, as the case may be, those businesses -

(a) In the income year which includes the last day of the first specified period in relation to the taxpayer and to the sale or other disposal of those new market export goods, to a deduction of an amount equal to 15 per cent of the value of export sales of those new market export goods:

(b) ... ... "

The definition of "new market" is contained in s.157(1)(b) and reads as follows :

"157. (1) For the purposes of this section -
...
(b) The term "new market", in relation to any taxpayer and to export goods of any kind, means -

(i) Any country outside New Zealand; or
(ii) Any part of any such country, -

which has been approved by the Secretary (of Trade and Industry) as constituting, for the purposes of this section, a distinct and separate market and is a country or, as the case may be, a part of a country which the Secretary certifies is a country or, as the case may be, a part of a country to which export goods of that kind have not (otherwise than in quantities determined by the Secretary to be token quantities) been exported from New Zealand by that taxpayer or by any other person during the period of 36 months immediately preceding the date on which that taxpayer first, within the period commencing on the 1st day of April 1975 and ending with the terminating date, sold or otherwise disposed of export goods of that kind (otherwise than in quantities determined by the Secretary to be token quantities) to that country or, as the case may be, to that part of that country: "

The term "new market export goods" is defined in s.157(1) (c) as follows :

> "s.157. (1) (c) The term "new market export goods", in relation to any taxpayer and to any export goods, means export goods which have been sold or otherwise disposed of by that taxpayer to a new market, being a new market in relation to that taxpayer and to those export goods:"

Mr Paterson pointed to the letters from the Secretary of Trade and Industry, produced in evidence, which approved new market status for Pakistan, and for the Solomon Islands and Malaysia for sales of aircraft and loaders respectively. He submitted that if the Court accepted that the aircraft and loaders were "export goods", then the objector was entitled to the deductions permitted by s.157 as it had exported goods to new markets within the meaning of that section.

Mr Almao, for the Commissioner, accepted that the issue in this appeal was whether the deductions for increased export sales incentives and new market sales incentives can be allowed for the sale of capital assets. He submitted that the objector sought to give a wide interpretation in the absence of a definition of the word "goods" to include capital assets, whereas the Commissioner contended that "goods" should be given a narrow interpretation, limited to the sale or disposal of goods forming part of the ordinary stock-in-trade of the business being carried on. Mr Almao then gave a careful analysis of the judgments of the Court of Appeal in Inland Revenue Commissioner v International Importing Ltd (supra), and he referred to the ambiguity which existed in that case as to the meaning of the word "exporting"

when both the taxpayer vendor and the departing traveller purchaser were "exporting" in the sense of causing something sold to be sent out of the country, or of taking something sold out of the country. He said it was because of that ambiguity that the Court of Appeal held that the section not being a fiscal provision should be given a fair, large and liberal interpretation so as to best ensure the attainment of the object of the section. Mr Almao submitted that there was no ambiguity in this case which would justify the Court in going beyond what he called the "narrow or literal" meaning of "goods". However a literal construction, in the contention of the Commissioner, limits the meaning of goods to stock-in-trade, whereas the literal construction contended by the objector embraces goods whether as stock-in-trade or as capital assets. Where there are differing views as to the literal construction of "goods" in ss.156 and 157, whether it be called an ambiguity or a conflict, the question is still one of construction.

Mr Almao turned to other parts of ss.156 and 157 in an endeavour to show that the context supports the Commissioner's construction of export goods being limited to stock-in-trade, as part of a business involving the sale of goods, and he said it would distort the plain meaning of s.156(5) and s.157(4) to construe "goods" as including capital assets within the meaning of those subsections.

I do not find, in a careful reading of the whole of ss.156 and 157, any words or context which would support the limited meaning of goods as sought by the Commissioner. Goods may be stock-in-trade for sale, or

capital assets for operational use. Businesses which use machinery, motor vehicles or aircraft in the course of the operational side of their business, very often have a sales side in which such assets are sold or disposed of when surplus to requirements or needing replacement. If a market exists overseas then I believe the Legislature intended to give encouragement for the sale or disposal of such assets on the overseas market as opposed to the New Zealand market, so as to increase exports to the advantage of our foreign exchange reserves. If sold overseas, those assets become "export goods" if the other requirements of ss.156 and 157 are met.

I find on the evidence all the requirements of ss.156 and 157 have been met so as to entitle the objector to the deductions sought under those sections. It was a taxpayer carrying on in New Zealand a business in which goods were sold, it exported from New Zealand goods which it sold and of which it was the owner at the time of the sale and which were not non-qualifying goods, and the sales of such goods were to "new markets". The amount of any such deduction is not in contention. Finally, in resolving the conflicting views as to the meaning of "export goods" for the purposes of both sections, I turn to Lord Donovan's fourth rule of construction and to the passage from the judgment of Turner P. already cited, and to s.5(j) of the Acts Interpretation Act 1924. There is a common purpose to both sections, namely, the encouragement of taxpayers who are in any business in New Zealand in which goods are sold, to seek overseas markets for those goods so as to

increase the country's earnings of foreign exchange. In my view, giving the word "goods" its ordinary meaning, and construing it so as to achieve the object of these non-fiscal provisions of the Act, I hold that in both ss.156 and 157 "export goods" includes goods whether from trading stock or capital assets.

Accordingly, the appeal is allowed and the answer to the question for the determination of the Court is that the Commissioner acted incorrectly in disallowing the objector's claim for the increased export incentive and new market increased export incentive in respect of the years ended the 31st October 1976, 1977 and 1978.

I allow the objector costs of $300.00 together with disbursements and witnesses expenses as fixed by the Registrar.

Chilmour J.

Solicitors:

B J Paterson Esq., Hamilton, for objector

Crown Law Office, Wellington, for Commissioner