



Ottawa, Friday, March 30, 1990

Appeal No. 2990

IN THE MATTER OF an appeal heard  
September 28, 1989, pursuant to section 81.19 of  
the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF a Notice of Decision  
of the Minister of National Revenue dated January  
29, 1988, with respect to a Notice of Objection filed  
pursuant to section 81.15 of the *Excise Tax Act*.

**BETWEEN**

**SPECTRUM EDUCATIONAL SUPPLIES LIMITED**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed. The Tribunal declares that the goods in issue, which are sold to educational institutions are exempt from federal sales tax as they qualify under section 10, Part III, Schedule III of the *Excise Tax Act*.

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

W. Roy Hines  
W. Roy Hines  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. 2990**

**SPECTRUM EDUCATIONAL SUPPLIES LIMITED**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*Excise Tax Act - Assessment of sales tax - Whether "Yael construction sets" and other products named on the Notice of Decision 60351AE should be exempt from sales tax within the context of section 10, Part III, Schedule III of the Excise Tax Act.*

**DECISION:** *The appeal is allowed. The Tribunal declares that the goods in issue, which are sold to educational institutions, are exempt from federal sales tax as they qualify under section 10, Part III, Schedule III of the Excise Tax Act.*

*Place of Hearing:* Ottawa, Ontario  
*Date of hearing:* September 28, 1989  
*Date of Decision:* March 30, 1990

*Panel Members:* Kathleen E. Macmillan, Presiding Member  
Arthur B. Trudeau, Member  
W. Roy Hines, Member

*Counsel for the Tribunal:* Danielle Bouvet

*Clerk of the Tribunal:* Molly Hay

*Appearances:* J. Druzin, for the appellant  
Ian Donahoe, for the respondent

**Cases Cited:** *Pharmacia (Canada) Limited v. The Deputy Minister of National Revenue for Customs and Excise (1976) 6 T.B.R. 403; Northern Alberta Institute of Technology v. The Deputy Minister of National Revenue for Customs and Excise (1984), 9 T.B.R. 367.*

**Statutes Cited:** *Excise Tax Act, R.S.C. 1985, c. E-15, subss. 50(1) and 51(1) and section 10, Part III, Schedule III.*

**Dictionaries Cited:** *Webster's New World Dictionary, 1974 Second College Edition and The Shorter Oxford Dictionary on Historical Principles, 1973, Third Edition.*

Appeal No. 2990

**SPECTRUM EDUCATIONAL SUPPLIES LIMITED**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member  
ARTHUR B. TRUDEAU, Member  
W. ROY HINES, Member

**REASONS FOR DECISION**

**SUMMARY**

The appellant, Spectrum Educational Supplies Limited (Spectrum), is a distributor of science and mathematics equipment to educational institutions. The company purchases the equipment from manufacturers around the world and markets it to school boards and directly to schools through catalogue sales. The goods at issue are manipulative materials, such as blocks, magnifying glasses, and compasses used to teach science and mathematics to primary school children.

At issue in this appeal is whether the appellant is entitled to an exemption from sales tax under section 10, Part III, Schedule III of the *Excise Tax Act*<sup>1</sup> (the Act) on the basis that the materials constitute "Utensils, instruments and other apparatus ... designed for use in classroom instruction and ... employed directly in teaching or research more than fifty per cent of the time they are in use; ... scientific apparatus and equipment ancillary thereto; [or] scientific utensils and instruments ...."

The appeal is allowed. The Tribunal finds that the appellant's sourcing and marketing of the goods in question indicate that educational considerations play an important role in their design and use. The Tribunal also sees no reason to restrict the definition of scientific instruments used by educational institutions to only those items used by students above a certain age.

**THE LEGISLATION**

The relevant provisions of the Act are as follows:

*50(1) There shall be imposed, levied and collected a consumption or sales tax ... on the sale price of all goods*

(a) *produced or manufactured in Canada*

...

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1. R.S.C. 1985, c. E-15.

*51(1) The tax imposed by section 50 does not apply to the sale or importation of the goods mentioned in Schedule III ...*

*SCHEDULE III*

*PART III*

*EDUCATIONAL, TECHNICAL, CULTURAL,  
RELIGIOUS AND LITERARY*

*10. Utensils, instruments and other apparatus that are designed for use in classroom instruction and that are to be employed directly in teaching or research for more than fifty per cent of the time they are in use; ... scientific apparatus and equipment ancillary thereto; scientific utensils and instruments; glassware for laboratory or scientific uses; parts of the foregoing; all of the foregoing for use by public libraries, public museums or institutions established solely for educational or scientific purposes, and not for sale or rental; articles and materials for use exclusively in the manufacture of the foregoing.*

THE FACTS

This is an appeal pursuant to section 81.19 of the Act from a decision of the Minister of National Revenue (the Minister). In that decision dated January 29, 1988, the Minister confirmed assessment number TOR EA 0730. The appellant appeals its assessed liability in the amount of \$10, 667.93, representing sales tax due on goods sold to educational institutions from September 4, 1982, to September 3, 1986. The appellant requests a decision that the goods be exempt from sales tax imposed by subsection 50(1), by virtue of subsection 51(1) and section 10, Part III, Schedule III of the Act.

The appellant is a small company that specializes in the sale of science and mathematics equipment to educational institutions across Canada. The materials are purchased from recognized manufacturers around the world.

The first witness for the appellant was Mr. Jack West who is the president of Spectrum. He introduced the goods as exhibits and described their acquisition, use and sale.

The items in issue are as follows:

The Yael construction set consists of pegs made of oak wood and polyethylene with pins that hold the pieces together. Children are able to make wheels, vehicles and axles out of them. The set was purchased by the appellant from an Israeli company that specializes in educational materials and sells to school distributors around the world.

The economy bulb holder is a plastic bulb holder with two clips for connecting wire. With the bulb holder, wire, batteries and small light bulb, a child is able to create an electric connection, and thereby understand and follow basic electrical circuits. The bulb holders were originally designed some 25 years ago through the Elementary Science Studies (ESS) program, the purpose of which was to develop low-cost materials for science education.

The reading glass magnifier is a magnifier set in a plastic frame and handle. There are two sizes, 50 mm and 75 mm in diameter. The reading glass magnifier is manufactured by JP Manufacturing Inc. in the United States. The appellant introduced, as an exhibit, a letter from the manufacturer stating that the reading glass magnifier was primarily designed for use as a teaching aid.

The nature viewer is a 5X magnification viewer with a 2.5 cm field of vision, used in outdoor education activities. The nature viewer is purchased from an agent in Japan.

The economy magnifier is a one inch plastic lens mounted in a plastic frame and handle, used to magnify insects or similar items. JP Manufacturing Inc. of the United States manufactures the economy magnifier. A letter from the company was introduced as an exhibit stating that the economy magnifier was primarily designed for use as a teaching aid.

The bearing compass is a plastic-mounted, liquid-filled compass, used for outdoor field trips. There are scales on the background plates that teach mathematics and proportionality. The bearing compass is purchased from an agent in Japan.

The mapping compass is similar to the bearing compass, but also contains a template for drawing orienteering symbols on maps. The mapping compass is also purchased from an agent in Japan.

The waterfall glasses are plastic containers which can be arranged in an interlocking pattern. Water poured into the top container flows down the pattern, teaching children about proportionality and gravity. Rolf Company, a well-known Dutch designer and manufacturer of educational materials, produces the waterfall glasses.

The solid blocks are multi-shaped blocks made of birchwood. By arranging the blocks in play, under the teacher's direction, children learn spatial and manipulative skills. These blocks are custom-made for the appellant by Brantworth Industries Ltd. according to specifications provided by educators and school boards.

The appellant's president testified that the sales of these items are made extensively through catalogues which are distributed only to school boards and educators. In the rare instances when sales are made to persons not entitled to a tax exemption, the proper tax is charged. According to the witness, the vast majority (over 99 percent) of sales are to educational institutions which are certified end users. Further, the goods at issue are not available in stores and, according to Mr. West, are not re-sold or rented by the school boards after they are purchased.

It is the appellant's contention that all the above-mentioned goods qualify as utensils, instruments and other apparatus that are designed for use in classroom instruction and that are to be employed directly in teaching or research for more than 50 percent of the time they are in use.

The second witness for the appellant was Mr. Michael Harrison, a consultant and employee of the Ottawa Board of Education for 27 years with extensive experience in elementary school science. On the basis of his qualifications, both parties agreed that Mr. Harrison be considered as an expert witness.

Mr. Harrison explained that there is a strong relationship between the accomplishments of learners in Grades 6, 7 and 8 and their exposure in the primary grades to manipulative materials, such as the goods at issue in this appeal. In recognition of this, the Ontario Ministry of Education has earmarked tens of millions of dollars over the past three years for expenditures on manipulative materials for learning mathematics and science.

### THE ISSUE

The issue in this appeal is whether the goods, which were sold by the appellant to educational institutions, qualify for the exemption from the sales tax imposed by paragraph 50(1)(a), by virtue of subsection 51(1) and section 10, Part III, Schedule III of the Act. If they are, then the appellant is entitled to claim a sales tax refund.

The appellant argues that it should be relieved of the payment of the assessed tax because the goods fall within the context of section 10, Part III, Schedule III of the Act. The goods are purchased by educational institutions and are not for sale or rental. They are utensils or apparatus used for the study of science and, consequently, should be exempt from sales tax.

The appellant relied on *Wang Laboratories (Canada) Limited v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>2</sup> and *Pharmacia (Canada) Limited v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>3</sup> where Member Deachman stated as follows:

*Put in a simpler form, the difference between the parties is that the appellant claims that, for the purposes of the tariff item 69605-1, a scientific preparation is scientific by its nature, whereas the respondent claims that the preparation must be scientific, not only by its nature, but also by the use which is to be made of it.*

...

*In its common meaning the word scientific cannot be defined within precise and rigid limits which would exclude either the position taken by the appellant or that of the respondent ... the word scientific may be construed to refer to the nature or the manner in which an article has been prepared or to its end use, for the furtherance of science.*

Accordingly, counsel for the appellant argued that the material is not required to be inherently scientific in its own right, but how it is used determines what it is. The material in a home environment could well be a toy, but if it is used in a structured school environment, the child's instinct to play is channelled into a learning concept.

In support of the opposite view, counsel for the respondent argued that the words of the legislation are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the legislation.

In that regard, given the wording of the Schedule III exemption, counsel argued that it was not the intent of the legislator to exempt ordinary goods put to scientific uses, but rather to exempt goods which are scientific in their own right.

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2. (1971) 5 T.B.R. 119.

3. (1976) 6 T.B.R. 403.

The word "scientific," when used as an adjective, has been afforded the following dictionary meanings:

Webster's New World Dictionary, 1974 Second College Edition, at page 1275:

*1. of or dealing with science [scientific study] 2. used in or for natural science [scientific apparatus]*

The Shorter Oxford English Dictionary on Historical Principles, Third Edition, 1973, at page 1904:

*2. occupied in or concerned with science or the sciences ... 3. of or pertaining to science or the sciences ....*

On the basis of the above definitions, in order to be considered within the Schedule III exemption, counsel for the respondent argued that goods must be normally of a class or type of goods which are manufactured with a certain degree of accuracy or precision, intended primarily for scientific use in a laboratory or for research purposes. He also argued that it is clear that the goods at issue are not designed for scientific applications, but rather could be put to a variety of non-scientific uses.

In support of this proposition, he cited the Tariff Board decision of *Northern Alberta Institute of Technology v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>4</sup> where the Board held that, in order to qualify for the Schedule III exemption as "utensils, instruments and other apparatus that are designed for use in classroom instruction," goods must be specifically designed by the manufacturer for use in classroom instruction. As highlighted by the respondent in that case, the Tariff Board recognized its past views that:

*... the term "designed for use" relates not to a conception in the mind of the importer or user but rather relates to a deliberate intention in the mind of the producer of the equipment as to the nature of its ultimate use.*

Counsel for the respondent further pointed out that the promotional material submitted by the appellant supports the view that, while the goods at issue may be marketed as educational products, they are not designed specifically for use in classroom instruction, and indeed could be used in a variety of recreational or other applications.

## DECISION

Schedule III provides for exemptions under various categories, three of which are relevant for the purposes of this appeal:

- utensils, instruments and other apparatus that are designed for use in classroom instruction and that are to be employed directly in teaching or research for more than fifty percent of the time they are in use;
- scientific apparatus and equipment ancillary thereto; and
- scientific utensils and instruments.

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4. (1984), 9 T.B.R. 367.

It is sufficient that the goods fall within the wording of any one of these three categories in order to benefit from the exemption.

With regard to the first exemption category, the Tribunal is of the view that the goods at issue constitute utensils, instruments and other apparatus, according to the common ordinary meaning of these terms.

From the evidence provided, the Tribunal is satisfied that all the goods at issue in this appeal are used in the classroom for more than 50 percent of the time. The Tribunal is also satisfied that the goods are marketed almost exclusively to educational institutions and are of limited interest to other buyers. The nature of the goods is such that they would have little or no value to school board purchasers beyond classroom use.

As to their use in teaching and research, the Tribunal places considerable weight on testimony by the expert witness to the effect that it is through manipulation of items, such as the goods at issue, that primary school children discover basic scientific phenomena. The evidence has shown that the products are developed after consultation with educators. In addition, the wooden blocks and other items are the subject of curriculum notices prepared by school boards to assist educators in the use of these materials.

In considering the wording "designed for use in classroom instruction," the Tribunal relied on the Northern Alberta Institute of Technology case in which the Tariff Board found that the words "designed for use" must go beyond simply a conception in the mind of the user of the product. Applying that test, the common screwdrivers and tricycles sold by the appellant for classroom use would not qualify for exemption under this category.

The Tribunal was not presented with evidence that indicated the intention in the mind of the producer for all the items at issue in this appeal. However, with respect to certain items, the Tribunal considers that the source of supply indicates that educational considerations played an important role in their design. The clearest case of this was the wooden block set where the appellant presented the manufacturer with design specifications based on his consultations with educators as to their requirements. Other items in issue, the Yael construction set, the two magnifiers and the waterfall glasses were purchased from manufacturers that specialize in the design and production of educational materials for sale to school distributors. Testimony revealed that the economy bulb holder, available from a number of manufacturers, was designed as part of the ESS program established some 25 years ago.

Consequently, the Tribunal finds that six of the items in the appeal, the solid blocks set, the Yael construction set, the two magnifiers, the waterfall glasses and the economy bulb holder fall within the wording of the first category of the exempting provisions.

Turning to the three remaining items, little information was available on the design or manufacture of the two compasses and the nature viewer (purchased from a Japan-based agent), making it difficult to judge whether or not they were designed for use in classroom instruction. However, the Tribunal finds that the items qualify for exemption under the second category on the basis that they constitute scientific apparatus and equipment ancillary thereto.



The Tribunal considers that these items are, by their nature, scientific and sees no reason in principle to restrict the interpretation of scientific instruments, utensils or apparatus to only those items used by students above a certain age. Evidence tendered by an expert witness at the hearing established that the character and nature of scientific apparatus vary according to the age of the student.

CONCLUSION

Accordingly, the appeal is allowed. The Tribunal finds that the appellant is entitled to an exemption under section 10, Part III, Schedule III of the Act in respect of the goods at issue sold to educational institutions from September 4, 1982, to September 3, 1986.

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

W. Roy Hines  
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Member