

Ottawa, Monday, January 27, 1992

Appeal No. 3040

IN THE MATTER OF an appeal heard on October 24, 1991,
under section 51.19 of the *Excise Tax Act*, R.S.C., 1970,
c. E-13, as amended;

AND IN THE MATTER OF a Notice of Decision of the
Minister of National Revenue dated February 18, 1988, with
respect to a notice of objection served under section 51.15 of
the *Excise Tax Act*.

BETWEEN

BEVEL EDGE GLASSWORKS LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed. Vanity mirrors installed in bathrooms, cut to size and glued to walls permanently, are materials for walls under section 18, Part I, Schedule V to the *Excise Tax Act*.

W. Roy Hines

W. Roy Hines
Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 3040

BEVEL EDGE GLASSWORKS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 51.19 (now 81.19) of the Excise Tax Act from a decision of the Minister of National Revenue, maintaining an assessment dated March 17, 1987. The issue is whether mirrors or sheets of mirrors cut to size and glued to walls in a building qualify for a reduced rate of tax as goods enumerated in section 18, Part I, Schedule V to the Excise Tax Act.

HELD: *The appeal is allowed. Vanity mirrors installed in bathrooms, cut to size and glued to walls permanently, are materials for walls and subject to the lower rate of sales tax. There is nothing in section 18, Part I, Schedule V, which would lead one to distinguish between a full wall mirror and a mirror that covers the full height and width of a wall, albeit from the top of a vanity to the ceiling.*

Place of Hearing: Calgary, Alberta
Date of Hearing: October 24, 1991
Date of Decision: January 27, 1992

Tribunal Members: W. Roy Hines, Presiding Member
Sidney A. Fraleigh, Member
Robert C. Coates, Q.C., Member

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Janet Rumball

Appearances: H. George McKenzie, for the appellant
Howard Baker, for the respondent

Appeal No. 3040

BEVEL EDGE GLASSWORKS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: W. ROY HINES, Presiding Member
SIDNEY A. FRALEIGH, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This is an appeal under section 51.19 (now 81.19) of the *Excise Tax Act*¹ (the Act) from a decision of the Minister of National Revenue (the Minister), maintaining an assessment dated March 17, 1987. The appellant, a licensed manufacturer of bevelled edge glass and mirror, was assessed for an amount of \$12,081.19 for the period of March 1, 1985, to September 30, 1986.

On June 12, 1987, the appellant objected partially to that determination on the ground that mirrors cut to size and glued to walls become permanent fixtures of a building and, therefore, should qualify as construction materials taxable at the lower rate.

On February 18, 1988, the Minister disallowed the objection because he interpreted the term "materials for ... walls," in section 18, Part I, Schedule V to the Act, as referring to those goods and materials that are commonly sold and used in the construction or erection of walls. That decision was appealed on August 15, 1988.

The issue in this appeal is whether mirrors or sheets of mirrors, cut to size and glued to walls in a building, qualify for a reduced rate of tax according to subsection 27(1.1) of the Act, as goods enumerated in section 18, Part I, Schedule V to the said Act.

Section 18, Part I, Schedule V, reads as follows:

18. Plaster boards, fibreboard, wall panels, buildings paper, wallpaper and materials for ceilings, walls, insulation or acoustical purposes, not including carpeting.

Mr. Maurice Malka, President of Bevel Edge Glassworks Ltd., appeared as a witness for the appellant. Mr. Malka described a variety of mirrors shown in Exhibits A-1 to A-5 that might be used in different locations throughout a residence (bathroom, bedroom, around a fireplace, etc.), noting that

1. R.S.C., 1970, c. E-13, as amended.

his firm produced all of these goods, that they are normally made to specifications and that they are permanently affixed to a wall by glue, namely, mirror mastic. The witness stated that the goods are not produced without a prior sale, that they may cover an entire wall or that they may only be installed as a vanity mirror in a bathroom. In all instances, the mirror, once installed, cannot be removed without being broken.

Mr. Azim S. Rajan, the Audit Unit Manager with the Calgary District Excise Office, appeared as a witness for the respondent. Mr. Rajan was the Excise Auditor responsible for verifying the books of the appellant. In responding to questions from counsel on both sides, Mr. Rajan clearly established that the mirrors that are the subject of this appeal are only those commonly known as vanity mirrors installed in bathrooms. In doing so, the witness referred to a sketch prepared by the appellant's former President (Exhibit B-1 Diagram with measurement - Master Bath), which illustrates the kind of vanity mirrors at issue. Mr. Rajan stated that wall mirrors extending from the floor to the ceiling were held by National Revenue, Customs and Excise (Revenue Canada) to qualify for the lower tax rate, but that vanity mirrors installed above a sink, even though cut to size and permanently attached, did not so qualify. Mr. Rajan's understanding of Revenue Canada's position was confirmed at the time with a Tax Interpretations Officer.

Following Mr. Rajan's testimony, counsel for the appellant subsequently agreed that the goods at issue are cut-to-size mirrors, installed on the walls in bathrooms according to customers' specifications. Counsel drew the Tribunal's attention to Exhibit A-2 Photos of mirrors in bathroom, which illustrates the kind of operation currently performed by the appellant.

Arguments in this case revolved around whether the goods in issue qualify as "wall panels" or "materials for walls" as provided for in the exempting provision. Counsel for the respondent argued that wall mirrors serve a decorative, architectural or design function, whereas vanity mirrors are more utilitarian in nature. Moreover, vanity mirrors are a finished product when they leave the appellant's plant and, as such, cannot be considered a "material" within the meaning of the exempting provision. It was further argued that the appellant had not discharged its onus to show that the assessment was incorrect.

Counsel for the appellant took the position that the mirrors in question could be regarded as either wall panels or materials for walls. The essence of his submission is that section 18, as a whole, is directed to wall coverings permanently affixed to walls rather than to the components that go into the construction of a wall. In other words, he argued that the said section is primarily concerned with finished articles that are brought to a facility and permanently installed in that facility. Counsel suggested that since there was no disagreement between the parties that the goods are permanently attached to walls, Revenue Canada had made, in the tax treatment of mirrors, an arbitrary distinction between mirrors located in bathrooms versus other areas of dwellings as well as between partial and full wall mirrors.

In the Tribunal's opinion, the evidence in this case clearly supports the position of the appellant. Section 18, Part I, Schedule V does not specifically mention mirrors, nor does it designate particular areas within a structure. It is concerned with a class of goods within the general category of construction materials, a class which includes wallpaper, but not carpeting, which are two items not commonly viewed as basic to the construction of a wall. Thus, in our view, the section contemplates,

as a minimum, the inclusion of some wall-finishing materials. The departmental position on floor-to-ceiling wall mirrors would support this view. The question then arises as to whether there is anything in section 18 that would lead one to distinguish between a full wall mirror and a mirror that covers the full height and width of a wall, albeit from the top of a vanity to the ceiling as shown by Exhibit B-1. Accepting that both types of mirrors are permanently installed and could not be removed without significant damage, the Tribunal finds nothing in section 18 that could logically lead to a distinction between these two products, nor can it find any support for the view that a differentiation might be made on the basis of the mirror's location in a building or on its decorative, architectural or design function. Indeed, it might be argued that these functions are always present, regardless of the actual location of a mirror in a building.

Therefore, the appeal is allowed.

W. Roy Hines
W. Roy Hines
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
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