



Ottawa, Thursday, June 27, 1991

Appeal No. 3105

IN THE MATTER OF an appeal heard on April 8, 1991, pursuant to section 81.19 of the *Excise Tax Act*, R.S.C., 1985, c. E-15;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated September 27, 1988, with respect to a notice of objection filed pursuant to section 81.15 of the *Excise Tax Act*.

BETWEEN

PAPPA GEPPETTO'S WONDERFUL WOODEN THINGS LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The appellant is liable to pay sales tax based on sale price as defined under the *Excise Tax Act*.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Robert J. Martin

Robert J. Martin
Secretary

Ottawa, Thursday, June 27, 1991

Appeal No. AP-90-241

IN THE MATTER OF an appeal heard on April 8, 1991, pursuant to section 81.19 of the *Excise Tax Act*, R.S.C., 1985, c. E-15;

AND IN THE MATTER OF two decisions of the Minister of National Revenue dated March 30, 1990, with respect to two notices of objection filed pursuant to section 81.15 of the *Excise Tax Act*.

BETWEEN

PAPPA GEPPETTO'S TOYS VICTORIA LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeals are dismissed. The appellant is liable to pay sales tax based on sale price as defined under the *Excise Tax Act*.

Sidney A. Fraleigh

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Presiding Member

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UNOFFICIAL SUMMARY

Appeal No. 3105

PAPPA GEPPETTO'S WONDERFUL WOODEN THINGS LTD. Appellant

and

THE MINISTER OF NATIONAL REVENUE Respondent

Appeal No. AP-90-241

PAPPA GEPPETTO'S TOYS VICTORIA LTD. Appellant

and

THE MINISTER OF NATIONAL REVENUE Respondent

During the relevant periods, the appellants were engaged in the manufacturing of wooden toys that were sold wholesale. The first appellant, Pappa Geppetto's Wonderful Wooden Things Ltd., was assessed for the period commencing January 8, 1986, and ending December 31, 1986. It had an amount owing of \$10,158.11 including unpaid taxes, interest and penalty. By Notice of Objection dated June 2, 1988, the appellant contended that the imposition of sales tax on the sale price of its goods was inequitable compared to the lower taxes that toy importers payed. Consequently, it felt justified in reducing its sale price by 40 percent to calculate its sales tax liability under the Excise Tax Act. By Notice of Decision dated September 27, 1988, the assessment was confirmed. By letter dated December 22, 1988, the appellant appealed the assessment to this Tribunal.

The second appellant, Pappa Geppetto's Toys Victoria Ltd., was assessed twice, both dated May 17, 1989. The first assessment covered the period commencing March 2, 1988, and ending October 3, 1988. The amount owing, including interest and penalty, totalled \$4,630.60. The second assessment covered the period commencing October 4, 1988, and ending February 28, 1989. The amount owing, including interest and penalty, totalled \$2,457.13. The appellant objected to the assessments, making the same arguments as the first appellant in its objection. By Notices of Decision dated March 30, 1990, the assessments were confirmed. By letter dated June 28, 1990, the second appellant appealed the assessments to this Tribunal. As the parties and issues were the same, the Tribunal organized both under the same appeal number. Similarly, the Tribunal consolidated the two appellants' hearings.

HELD: *The appeals are dismissed. The appellants are liable to pay sales tax based on sale price as defined under the Excise Tax Act.*

Place of Hearing: Vancouver, British Columbia

Date of Hearing: April 8, 1991

Date of Decision: June 27, 1991

Tribunal Members: Sidney A. Fraleigh, Presiding Member

Kathleen E. Macmillan, Member

Arthur B. Trudeau, Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Nicole Pelletier

Appearances: Brian J. Saunders, for the respondent

Case Cited: Walbern Agri-Systems Ltd. v. The Minister of National Revenue,
Canadian International Trade Tribunal, Appeal No. 3000,
December 21, 1989.

Appeal No. 3105

PAPPA GEPPETTO'S WONDERFUL WOODEN THINGS LTD. Appellant

and

THE MINISTER OF NATIONAL REVENUE Respondent

Appeal No. AP-90-241

PAPPA GEPPETTO'S TOYS VICTORIA LTD. Appellant

and

THE MINISTER OF NATIONAL REVENUE Respondent

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
KATHLEEN E. MACMILLAN, Member
ARTHUR B. TRUDEAU, Member

REASONS FOR DECISION

This decision encompasses three appeals made pursuant to section 81.19 of the *Excise Tax Act*¹ (the Act). One appeal was made by Pappa Geppetto's Wonderful Wooden Things Ltd. while two were made by the second appellant, Pappa Geppetto's Toys Victoria Ltd. The two appeals by the second appellant were joined because the facts, issues and parties were the same. Similarly, the Tribunal consolidated the two appellants' hearings because the facts and issues were the same. Also, the two appellants shared the same president and neither was represented at the time of hearing.

ISSUE AND APPLICABLE LEGISLATION

The issue in these appeals is whether the appellants were entitled to reduce the actual sale price of their goods sold to retailers by 40 percent for purposes of determining their tax liability pursuant to subsection 50(1) of the Act.

For purposes of these appeals, the relevant provisions of the Act read as follows:

42. In this Part,

(...)

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

"sale price", for the purpose of determining the consumption or sales tax, means

(a) except in the case of wines, the aggregate of

(i) the amount charged as price before any amount payable in respect of any other tax under this Act is added thereto,

(ii) any amount that the purchaser is liable to pay to the vendor by reason of or in respect of the sale in addition to the amount charged as price, whether payable at the same or any other time, including, without limiting the generality of the foregoing, any amount charged for, or to make provision for, advertising, financing, servicing, warranty, commission or any other matter, and

(iii) the amount of the excise duties payable under the Excise Act whether the goods are sold in bond or not,

(...)

50. (1) There shall be imposed, levied and collected a consumption or sales tax at the rate specified [prescribed]² in subsection (1.1) on the sale price [or on the volume sold]³ of all goods

(a) produced or manufactured in Canada

(i) payable ... by the producer or manufacturer at the time when the goods are delivered to the purchaser or at the time when the property in the goods passes, whichever is the earlier,

(...)

FACTS

During the relevant periods, the appellants were engaged in the manufacturing of wooden toys that were sold wholesale.

The first appellant, Pappa Geppetto's Wonderful Wooden Things Ltd., was assessed for the period commencing January 8, 1986, and ending December 31, 1986. It had an amount owing of \$10,158.11, including unpaid taxes, interest and penalty. By Notice of Objection dated June 2, 1988, the appellant contended that the imposition of sales tax on the sale price of its goods was inequitable compared to the lower taxes that toy importers paid. Consequently, it felt justified in reducing its sale price by 40 percent to calculate its sales tax liability under the Act. By Notice of Decision dated September 27, 1988, the assessment was confirmed. By letter dated December 22, 1988, the appellant appealed the assessment to this Tribunal.

2. R.S.C., 1985, c. 42 (2nd Supp.).

3. *Ibid.*

The second appellant, Pappa Geppetto's Toys Victoria Ltd., was assessed twice, both dated May 17, 1989. The first assessment covered the period commencing March 2, 1988, and ending October 3, 1988. The amount owing, including interest and penalty, totalled \$4,630.60. The second assessment covered the period commencing October 4, 1988, and ending February 28, 1989. The amount owing, including interest and penalty, totalled \$2,457.13. The appellant objected to the assessments, making the same arguments as the first appellant in its objection. By Notices of Decision dated March 30, 1990, the assessments were confirmed. By letter dated June 28, 1990, the second appellant appealed the assessments to this Tribunal. As the parties and issue were the same, the Tribunal organized both under the same appeal number. Similarly, the Tribunal consolidated the two appellants' hearings.

ARGUMENTS

The first appellant, Pappa Geppetto's Wonderful Wooden Things Ltd., stated in its brief that an inequality of tax treatment exists between imported and domestically manufactured products. It further argued that the value for tax used by itself is a value set at fair market value while the respondent's value is not.

The second appellant, Pappa Geppetto's Toys Victoria Ltd., filed two identical briefs, one for each of the assessments it was appealing. The arguments were basically the same as those of the first appellant. It argued that there were serious inequalities between the tax treatment of toy importers and the domestic toy manufacturing industry, resulting in undue hardship on the domestic industry. It argued that the respondent's method of imposing tax and his calculation of fair market value are attributable to erroneous information and statistics gleaned by the respondent; and the imposition of the tax is arbitrary, discriminatory and contrary to the principles of natural justice. The appellant requested that the appeal be allowed and the assessment be referred to the respondent for reconsideration and reassessment.

The respondent argued that as the appellants were manufacturers or producers of goods in Canada, they were required to pay sales tax on the goods manufactured or produced at the time of their delivery to the purchaser or when the property in the goods passes. The respondent continued by arguing that the appellants were required to pay sales tax on the "sale price" of the goods they manufacture or produce and they were not entitled to calculate their sales tax liability on a price other than the "sale price" as that term is defined under the Act. The respondent further argued that where a person sought to be taxed comes within the letter of the law, the person must be taxed even if the Tribunal reviewing the matter considers that a hardship may result. The respondent asked that his decision be upheld and the appeals dismissed.

FINDING OF THE TRIBUNAL

Although aware of the date, time and place of the hearing, the appellants chose not to attend or be represented at the hearing. The Tribunal was informed of the appellants' intention not to attend on Friday afternoon before the Monday morning hearing. Consequently, the Tribunal proceeded in their absence. The Tribunal heard submissions from the respondent and referred to the briefs filed on behalf of the appellants.

There was no disagreement between the parties on the facts of this case. The appellants' argument was based entirely on their contention that the basis used to determine the "sale price" of goods as defined in the Act placed the domestic industry in an unfair competitive position in relation to similar imported goods.

Section 42 of the Act is very clear on how the "sale price" of goods is determined. It is a well established principle that the Tribunal must interpret the law as it stands. Pursuant to subsection 16(c) of the *Canadian International Trade Tribunal Act*⁴ the Tribunal has the duty to hear, determine and deal with all appeals that, pursuant to any other Act, may be made to the Tribunal. Section 81.19 of the *Excise Tax Act* provides that any person who has served a notice of objection under section 81.15 may appeal to the Tribunal. The Tribunal's jurisdiction under section 81.27 of the Act encompasses the power to dismiss an appeal, to allow it, in whole or in part, and to vacate or vary the assessment that is the subject of the appeal.

The appellants are seeking equitable relief from what they consider to be undue hardship imposed upon them by the Act. The powers of the Tribunal on appeals are defined and, as stated on page 6 of the Tribunal's decision in *Walbern Agri-Systems Ltd. v. The Minister of National Revenue*,⁵

... This does not mean that the Tribunal is authorized to introduce concepts of equity nor to accept compassionate considerations in dealing with the appeal.

The Tribunal recognizes that the appellants' arguments relate to trade and fiscal policy, both of which are outside the scope of its jurisdiction. Consequently, nothing permits the Tribunal to defer from the application of the law in this appeal.

CONCLUSION

The appeals are dismissed. The appellants are liable to pay sales tax based on sale price as defined under the Act.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

4. R.S.C., 1985, c. 47 (4th Supp.).

5. Canadian International Trade Tribunal, Appeal No. 3000, December 21, 1989.