Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2003-035

713460 Ontario Ltd. o/a Heirloom Clock Company

v.

Minister of National Revenue

Decision and reasons issued
Friday, August 13, 2004

Canada

TABLE OF CONTENTS

IN THE MATTER OF an appeal under 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 February 21, 2003, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

713460 ONTARIO LTD. O/A HEIRLOOM CLOCK COMPANY **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	April 5, 2004
Tribunal Members:	Zdenek Kvarda, Presiding Member Richard Lafontaine, Member Meriel V. M. Bradford, Member
Counsel for the Tribunal:	Marie-France Dagenais
Clerk of the Tribunal:	Anne Turcotte
Parties:	Peter A. Eickmeier, for the appellant Sonia Barrette, for the respondent

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STATEMENT OF REASONS

1. This is an appeal pursuant to section 81.19 of the *Excise Tax Act*[1] from a decision of the Minister of National Revenue (the Minister) dated February 21, 2003, confirming the assessment for unpaid excise taxes dated June 26, 2002. The Tribunal held a hearing by way of written submissions pursuant to rule 36.1 of the *Canadian International Trade Tribunal Rules*.[2] The issue is whether 713460 Ontario Ltd. o/a Heirloom Clock Company (Heirloom) is a deemed manufacturer of clocks under subsection 23(11) of the *Act* or, in the alternative, whether it is properly defined as a manufacturer of clocks pursuant to subsection 23(1) or, in the further alternative, whether it is a manufacturer or producer, since it prepares "goods for sale by assembling . . . packaging or repackaging the goods" pursuant to subsection 2(1), and, if so, it should collect and remit excise tax on its sales of grandfather clocks.

EVIDENCE

2. The Minister and Heirloom filed an agreed statement of facts dated February 13, 2004. Among these facts, the following are noted:

- Heirloom is in the business of manufacturing grandfather clock cabinets.
- A grandfather clock consists of a clock cabinet, a mechanism, a dial, a pendulum and weights to drive the pendulum.
- When a customer orders a grandfather clock cabinet with a clock mechanism, a dial, a pendulum and weights, Heirloom installs the mechanism and the dial in the clock cabinet before shipping it, but does not install the pendulum and weights.
- Between April 1, 1998, and December 31, 2000, Heirloom manufactured clock cases and installed clock mechanisms and dials in these clock cases for sale to retailers and, occasionally, to consumers.

POSITIONS OF THE PARTIES

3. Heirloom submits that it cannot be considered a person that manufactures clocks pursuant to subsection 23(11) of the *Act*, since it does not put a clock movement into a clock. It submits that it did not sell clocks to wholesale customers, but sold clock cabinets and clock movements.

4. According to Heirloom, a clock movement consists of the moving parts of the clock, which include the moving parts of the mechanism, the hands of the dial, the pendulum and the weights that drive the pendulum.

5. Heirloom argues that, when it sells a grandfather clock, it only installs the mechanism and the hands of the dial, but never installs the pendulum and the weights. As such, Heirloom submits that it only installs part of a clock movement and that the end product that it sells is not functional and cannot be considered a clock.

6. Heirloom submits that the Tribunal should consider dictionary definitions to determine what is a clock movement. Heirloom makes reference to a dictionary definition of the term "movement", which

1. R.S.C. 1985, c. E-15 [*Act*].
2. S.O.R./91-499.

partly states that it is "the moving parts of a mechanism",[3] and argues that the movement of the clock is the moving parts of the clock, which include the weights and the pendulum.

7. Heirloom further argues that, to be considered a clock, an object must be able to keep time. Since a grandfather clock must have weights and a pendulum to keep time, the grandfather clocks that Heirloom manufactures cannot be considered clocks when they are shipped to its customers, because there are no weights and pendulum installed in the clock cabinets.

8. Heirloom also argues that it cannot be considered a clock manufacturer pursuant to subsection 23(1) of the *Act* nor a deemed manufacturer pursuant to subsection 2(1), since it does not deliver to a purchaser a complete manufactured clock, but rather clock components and parts of a clock movement that are not in a fully assembled and functioning condition.

9. The Minister submits that Heirloom is a manufacturer or producer, since it "prepares goods for sale by assembling . . . packaging or repackaging the goods" pursuant to subsection 2(1) of the *Act*.

10. The Minister makes reference to the Tribunal's decision in *Movado Group of Canada, Inc. v. M.N.R.*,[4] where the Tribunal, in examining paragraph (*f*) of the definition of the term "manufacturer or producer" in subsection 2(1) of the *Act*, found that the addition of a watch strap to a watch head could not be considered "manufacture or production", since it did not cause the watch to be able to perform a function that it could not previously perform. The Minister argues that, in the present case, since Heirloom performs the action of inserting a movement in a clock cabinet, which, in the Minister's view, renders the clock functional, Heirloom is a manufacturer or producer of clocks pursuant to paragraph (*f*).

11. The Minister also argues that Heirloom is deemed to have manufactured clocks pursuant to subsection 23(11) of the *Act* by virtue of putting a clock movement in a clock case. According to the Minister, the action of inserting the movement into a clock renders the clock functional, and a clock cannot operate without the movement. To understand the term "movement", the Minister makes reference to the term "clock movement" found on the Clockworks Web site,[5] where it is defined as "the part of the clock that has all the gearing in it." The Minister further makes reference to another definition of the term "clock movement" found on the Online Clock Place Web site,[6] where it is stated: "A clock movement is the part that is made up of lots of little gears.. . . They are the parts of the clock that do all the work, and are responsible for whether your clock keeps time well, or not." In applying these definitions to the facts of this case, the Minister argues that, by installing the mechanism and the hands of the dial in a clock cabinet, Heirloom does put a clock movement into a clock and, as such, is deemed to have manufactured a clock by virtue of putting a movement into a clock case.

12. The Minister relies on ruling card 0625/5-1,[7] which deals with kits, to support the position that Heirloom is a manufacturer of clocks and to reply to Heirloom's contention that it markets and sells clock components, but not clocks. The ruling card partly provides that, if clock components are imported in knocked down condition from the same source, in equal quantity, they will be regarded as clocks within the meaning of paragraph 8(*a*) (now 5(*a*))of Schedule I to the *Act*.

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3. Appellant's Brief, para. 19.
4. (31 August 1998), AP-97-027 (CITT) [*Movado*].
5. http://www.clockworks.com/replacemove.html.
6. http://onlineclockplace.com/Hermle-Movements.html.
7. May 7, 1973.

13. Finally, the Minister argues that Heirloom is a manufacturer of clocks pursuant to subsection 23(1) of the *Act*, since it manufactured clocks, one of the goods mentioned in Schedule I to the *Act*, and delivered them to a purchaser.

DECISION

14. The issue is whether Heirloom is a deemed manufacturer of clocks under subsection 23(11) of the *Act* or, in the alternative, whether it is properly defined as a manufacturer of clocks pursuant to subsection 23(1) or, in the further alternative, whether it is a manufacturer or producer, since it prepares "goods for sale by assembling . . . packaging or repackaging the goods" pursuant to subsection 2(1), and, if so, it should collect and remit excise tax on its sales of grandfather clocks.

15. The relevant provisions of the *Act*, stipulate, in part, as follows:

> 2. (1) The following definitions apply in this section, Parts I to VIII (other than section 121) and Schedules I to IV:
>
> "manufacturer or producer" includes
>
> (*f*) any person who, by himself or through another person acting for him, prepares goods for sale by assembling, blending, mixing, cutting to size, diluting, bottling, packaging or repackaging the goods or by applying coatings or finishes to the goods, other than a person who so prepares goods in a retail store for sale in that store exclusively and directly to consumers.
>
> 23. (1) Subject to subsections (6) to (8.3) and 23.2(6), whenever goods mentioned in Schedules I and II are imported into Canada or manufactured or produced in Canada and delivered to a purchaser thereof, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this or any other Act or law, an excise tax in respect of those goods at the applicable rate set out in the applicable section in whichever of those Schedules is applicable, computed, where that rate is specified as a percentage, on the duty paid value or the sale price, as the case may be.
>
> 23. (11) Where a person has, in Canada,
>
> (*a*) put a clock or watch movement into a clock or watch case,
> (*b*) put a clock or watch movement into a clock or watch case and added a strap, bracelet, brooch or other accessory thereto, or
> (*c*) set or mounted one or more diamonds or other precious or semi-precious stones, real or imitation, in a ring, brooch or other article of jewellery,
>
> he shall for the purposes of this Part, be deemed to have manufactured or produced the watch, clock, ring, brooch or other article of jewellery in Canada.
>
> SCHEDULE I
>
> 5. (*a*) Clocks and watches adapted to household or personal use, except railway men's watches, and those specially designed for the use of the blind, ten per cent of the amount by which the sale price or duty paid value exceeds fifty dollars.

16. Heirloom contends that its grandfather clock cabinets should not be taxed pursuant to paragraph (*f*) of the definition of "manufacturer or producer" set out in subsection 2(1) and subsections 23(1) and 23(11) of the *Act*, since it sometimes sells clocks and sometimes sells only clock components.[8]

8. Agreed Statement of Facts, para. 5.

17. The Minister contends that the determination that Heirloom is a manufacturer of clocks and therefore required to pay excise tax upon the sale of those clocks accords entirely with the relevant legislation and rules.[9]

18. To determine whether Heirloom is a manufacturer of clocks and, if so, it should collect and remit excise tax on its sales of grandfather clocks, the Tribunal is of the view that it must first determine what constitutes a "clock movement". There is no definition of the term "movement" in the *Act*. As recognized in previous decisions,[10] the Tribunal will therefore look to the ordinary meaning of the term, as found in conventional dictionaries. The Tribunal considered the dictionary definition of the term "movement" to which Heirloom referred, which partly states that it is "the moving parts of a mechanism". The Tribunal also considered the definition of a "clock movement" found on the Online Clock Place Web site, where it is stated: "A clock movement is the part that is made up of lots of little gears.. . . They are the parts of the clocks that do all the work, and *are responsible for whether your clock keeps time well, or not*." (Emphasis added)

19. The parties agree that a grandfather clock consists of a clock cabinet, a mechanism, a dial, a pendulum and weights to drive the pendulum. The parties also agree that Heirloom does not install the pendulum and the weights in the clock cabinets before selling the grandfather clocks.[11]

20. The Tribunal is of the view that the clock movement of a grandfather clock consists of all the moving parts of the clock, which include the weights and the pendulum. The Tribunal is also of the view that the movement of a clock is what renders it functional. Since the primary function of a clock is to keep time, the Tribunal is of the opinion that Heirloom had to install all the components of a grandfather clock in the clock cabinet to be considered as the person that is deemed to have manufactured the grandfather clocks. The evidence indicates that Heirloom does not install the pendulum and the weights in the clock cabinets before selling the grandfather clocks. Thus, the Tribunal finds that Heirloom is not deemed to have manufactured clocks, since it has not put a clock movement into a clock in accordance with the requirements of subsection 23(11) of the *Act*.

21. The Tribunal also finds that Heirloom cannot be considered a manufacturer of clocks pursuant to subsection 23(1) of the *Act*. Pursuant to subsection 23(1) and paragraph 5(*a*) of Schedule I to the *Act*, excise tax is imposed on clocks that are manufactured or produced in Canada and delivered to a purchaser of those goods. The Tribunal is of the view that, in order for an object to be considered a manufactured clock, it must be able to keep time. The evidence indicates that all the components must be installed in order for a grandfather clock to be able to keep time. Since the grandfather clocks manufactured by Heirloom do not have the weights and pendulum and, as a result, are not able to keep time, Heirloom cannot be considered a manufacturer of clocks pursuant to subsection 23(1).

22. The Tribunal also finds that Heirloom is not a deemed manufacturer pursuant to subsection 2(1) of the *Act*. In applying the rationale in *Movado* to the present case, Heirloom must have had manufactured functional clocks in order for it to be considered a manufacturer. Since the evidence indicates that Heirloom does not install all the components of a grandfather clock in its clock cabinets, and since the Tribunal has already found that a grandfather clock is only functional when all its components are installed, Heirloom is

9. Agreed Statement of Facts, para. 6.
10. See, for example, *Conair Consumer Products Inc. v. Commissioner of the Canada Customs and Revenue Agency* (20 October 2003), AP-2002-095 (CITT).
11. Agreed Statement of Facts, paras. 2, 4.

not a deemed manufacturer or producer pursuant to paragraph (*f*) of the definition of "manufacturer or producer" set out in subsection 2(1).

23. Finally, the Tribunal is of the opinion that an administrative interpretation found in a ruling card, such as the one referred to by the Minister, should not override a clear provision of the *Act*. In the Tribunal's view, the wording of the relevant legislative provisions cannot be interpreted to mean that excise tax should be collected and remitted on the sales of unassembled clocks that are not functional.

24. In light of the foregoing, the Tribunal is of the view that the Minister's assessment is not well founded.

25. The appeal is allowed.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member