

Ottawa, Friday, April 23, 1993

Appeal No. AP-89-255

IN THE MATTER OF an appeal heard on February 15, 1993,
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 September 15, 1989, with respect to a
notice of objection served under section 81.15 of the *Excise
Tax Act*.

BETWEEN

CANADIAN GARDEN PRODUCTS LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-89-255

CANADIAN GARDEN PRODUCTS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the appellant is liable for federal sales tax on the difference between the tax calculated on its selling price of certain flower pots and the amount of tax remitted by Gascan Ltd., the company which sold the flower pots to the appellant (which tax was based on Gascan Ltd.'s selling price to the appellant). The assessment was made on the basis that, according to paragraph (b) of the definition of "manufacturer or producer" under subsection 2(1) of the Act, the appellant was the legal manufacturer of the goods on which Gascan Ltd. accounted for tax.

HELD: *The appeal is dismissed.*

Place of Hearing: Winnipeg, Manitoba

Date of Hearing: February 15, 1993

Date of Decision: April 23, 1993

Tribunal Members: Michèle Blouin, Presiding Member

Desmond Hallissey, Member

Lise Bergeron, Member

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Janet Rumball

Appearance: Brian Tittmore, for the respondent

Appeal No. AP-89-255

CANADIAN GARDEN PRODUCTS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
DESMOND HALLISSEY, Member
LISE BERGERON, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from an assessment of the Minister of National Revenue (the Minister).

The appellant is in the business of marketing and selling a wide variety of horticultural products, including flower pots. The appellant purchases its supply of flower pots from Gascan Ltd. (GL) and, in turn, sells them to its customers. It was alleged by the respondent that the appellant and GL are related companies.

By notice of assessment dated March 6, 1987, the Minister advised the appellant that it was being assessed for tax on the difference between the tax calculated on its selling price of certain flower pots and the amount of tax remitted by GL (which tax was based on GL's selling price to the appellant). The assessment was made on the basis that, according to paragraph (b) of the definition of "manufacturer or producer" under subsection 2(1) of the Act, the appellant was the legal manufacturer of the goods on which GL accounted for tax. The assessment period was from April 1, 1985, to May 31, 1986. By notice of objection dated May 14, 1987, the appellant objected to the assessment on the basis that it does not own, hold or claim any patent, proprietary, sales or other right to the goods being manufactured by GL and, thus, is not the "manufacturer or producer" within the meaning of paragraph (b) of the definition of "manufacturer or producer" under subsection 2(1) of the Act. By notice of decision dated September 15, 1989, the respondent confirmed the assessment.

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

A hearing in this matter was held on February 15, 1993. The appellant did not appear at the hearing. Counsel for the respondent did not call any witnesses, but did file, at the hearing, copies of case law referenced in his brief. The Tribunal examined these documents, as well as those materials previously filed with the Tribunal. The Tribunal is of the view that, in this case, those materials are not sufficient to clearly establish that the appellant is not the manufacturer or producer of the flower pots in issue within the meaning of paragraph (b) of the definition of "manufacturer or producer" under subsection 2(1) of the Act. Therefore, the Tribunal concludes that the appellant has failed to discharge its evidentiary burden to show that the respondent's assessment was erroneous.

Accordingly, the appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

Lise Bergeron
Lise Bergeron
Member