

Ottawa, Monday, March 16, 1992

**Appeal No. AP-89-260**

IN THE MATTER OF an appeal heard on October 24, 1991,  
under section 81.19 of the *Excise Tax Act*, R.S.C., 1985,  
c. E-15, as amended;

AND IN THE MATTER OF a decision of the Minister of  
National Revenue dated September 28, 1989, relating to a  
notice of objection served under section 81.15 of the  
*Excise Tax Act*.

**BETWEEN**

**J.B. FURNITURE MANUFACTURING LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed. The Tribunal finds that the appellant and J.B. Distributors are a single legal entity.

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. AP-89-260**

**J.B. FURNITURE MANUFACTURING LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant, licensed under the Excise Tax Act as a manufacturer, carries on a furniture manufacturing business in Calgary, Alberta. During the period in question, the goods produced by the appellant were distributed by a company known as J.B. Distributors. The appellant calculated its sales tax liability on the basis of the price it charged J.B. Distributors, and remitted sales tax accordingly.*

*The issue in this appeal is whether the appellant and J.B. Distributors were two distinct legal entities or, as argued by the respondent, whether they were a single legal entity. In his argumentation, the respondent ruled to disregard the sale price established between the two companies by virtue of subsection 58(1) of the Excise Tax Act. The tax should be assessed on the basis of the price at which J.B. Distributors sold the goods to the public.*

**HELD:** *The appeal is dismissed. Having considered the evidence presented by the parties, the Tribunal does not find the existence of an arm's length relationship between the appellant and J.B. Distributors. As such, the Tribunal finds that the two companies are a single legal entity.*

*Place of Hearing: Calgary, Alberta*

*Date of Hearing: October 24, 1991*

*Date of Decision: March 16, 1992*

*Tribunal Members: W. Roy Hines, Presiding Member*

*Sidney A. Fraleigh, Member*

*Robert C. Coates, Q.C., Member*

*Legal Services: France Deshaies*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Harkrishan Singh Jaswal, for the appellant*

*Linda J. Wall, for the respondent*

**Appeal No. AP-89-260**

**J.B. FURNITURE MANUFACTURING 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 from a decision rendered by the Minister of National Revenue on September 28, 1989, under which the appellant was liable, by virtue of section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act), for taxes, interest and penalty for the sum of \$25,654.55. The period covered by the assessment was from October 7, 1987, to March 31, 1988.

The appellant, licensed under the Act as a manufacturer, carries on a furniture manufacturing business in Calgary, Alberta. The goods produced by the appellant were distributed by a company known as J.B. Distributors. The appellant calculated its sales tax liability on the basis of the price it charged J.B. Distributors, and remitted sales tax accordingly.

The issue in this appeal is whether the appellant and J.B. Distributors were two distinct legal entities or whether they were, as argued by the respondent, a single legal entity. In his argumentation, the respondent ruled to disregard the sale price established between the two companies by virtue of subsection 58(1) of the Act.<sup>2</sup> The tax should be assessed on the basis of the price at which J.B. Distributors sold the goods to the public.

Mr. Harkrishan Singh Jaswal, President and Director of J.B. Furniture Manufacturing Ltd., appeared on behalf of the appellant. In response to questions from the Tribunal and counsel for the respondent, he described various aspects of the company and its operations. The company started its operations in 1987 to manufacture wooden and upholstered furniture. During the period covered by the assessment, it was selling exclusively to J.B. Distributors, which was the trade name used by Jaswal Furniture Ltd., and manufacturing goods only to meet this latter's demand. It was not carrying inventory for itself. It was making a profit of about 5 to 10 percent on sales. Jaswal Furniture Ltd.'s President-Director and sole shareholder was Mr. Karamjit Singh Jaswal, the brother of Mr. Harkrishan Singh Jaswal. Both companies were sharing production and sales facilities. Mr. Harkrishan Singh Jaswal's testimony revealed that his brother was responsible for taking all the furniture orders. It also showed that there was an overlap between the two companies in accounting and bank records, and ownership of the manufacturing equipment. Mr. Karamjit Singh Jaswal attended the hearing, but did not appear as a witness.

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

2. From October 7, 1987, to December 31, 1987, the relevant provision was section 34 of the *Excise Tax Act*, R.S.C., 1970, c. E-13, as amended. This section was repealed and replaced by section 58, effective January 1, 1988, S.C., 1988, c. 18, s. 18.

Mr. Stanley Doherty, a certified management accountant, appeared as a witness for the respondent. He carried out the audit of the appellant when he was an auditor at Revenue Canada, Customs and Excise. He testified that, in the course of his audit, he learned that the equipment in the warehouse was owned by J.B. Distributors and that the rent was also being paid by it. He also stated that he was not able to find adequate information to conclude that the transactions were based on an arm's length relationship since there were no ledgers kept on shipments, sales or purchases. In his view, there was very poor internal financial control. Further investigation by Mr. Doherty led him to conclude that because the two companies operated out of the same premises, used the same telephone and equipment, and involved blood relations, the companies were virtually one and the same. His investigation also indicated that J.B. Distributors marked up its price to retailers by a substantial amount over its purchase price from the appellant (over 100 percent).

Having reviewed the evidence and considered the arguments presented in this case, the Tribunal concludes that the appeal must fail. As stated before, the issue is whether the appellant and J.B. Distributors were a single entity or separate legal entities. The appellant was fully aware of the position that would be taken by the respondent at the hearing, but did not seize the opportunity to bring forward any documentation that might have substantiated the existence of an arm's length relationship with the distributing company. Also, Mr. Harkrishan Singh Jaswal's testimony did not assist the Tribunal in verifying a separate identity for the two companies, a problem that may have been reduced if Mr. Harkrishan Singh Jaswal's brother, present throughout the hearing, had testified in support of the position put forward by the appellant. On the other hand, the respondent, through his witness, Mr. Doherty, provided considerable evidence to conclude that the appellant and J.B. Distributors were one company: the companies shared the same premises; the appellant was using equipment owned by J.B. Distributors; J.B. Distributors was the appellant's only client; there was overlapping between the two companies' accounting records and utilisation of bank accounts. All of this serves to reinforce the view that the two brothers were working closely in a single legal entity. As such, the Tribunal concurs with counsel for the respondent that there is no evidence that a sale took place between the appellant and J.B. Distributors, and sales tax should be calculated accordingly.

The appeal is dismissed.

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