

Ottawa, Thursday, April 4, 1991

Appeal No. AP-89-033

IN THE MATTER OF an appeal heard on February 28, 1991,
pursuant to section 81.19 of the *Excise Tax Act*, R.S.C., 1985,
c. E-15;

AND IN THE MATTER OF a notice of decision issued by the
Minister of National Revenue on March 8, 1989, with respect
to a notice of objection filed pursuant to section 81.15 of the
Excise Tax Act.

BETWEEN

CHARCO INDUSTRIES

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal finds that it cannot overrule the text of the Act even if an error was allegedly made by the respondent's officials.

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.

Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau

Member

Michèle Blouin

Michèle Blouin

Member

Robert J. Martin

Robert J. Martin

Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-89-033

CHARCO INDUSTRIES

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Excise Tax Act - Whether tomato stakes manufactured and sold by the appellant are eligible for the exemption under section 1, Part XIII, Schedule III to the Excise Tax Act. Whether the appellant can hold the respondent responsible for the incorrect information received from the respondent's officials.

The appeal is filed pursuant to section 81.19 of the Excise Tax Act against the decision of the Minister of National Revenue, which dismissed the appellant's objection and thereby confirmed the Notice of Assessment dated August 12, 1987. The appellant, Charco Industries, objected to the assessment on the grounds that it had been misinformed by the officials of the Department of National Revenue, Customs and Excise, who allegedly stated that the tomato stakes it produces were exempt from federal sales tax.

HELD: *The appeal is dismissed.*

Place of Hearing: Ottawa, Ontario
Date of hearing: February 28, 1991
Date of Decision: April 4, 1991

Tribunal Members: Robert J. Bertrand, Q.C., Presiding Member
Arthur B. Trudeau, Member
Michèle Blouin, Member

Counsel of the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Nicole Pelletier

Appearances: Claude Chartrand, for the appellant
Alain Lafontaine, for the respondent

Cases Cited: *Minister of National Revenue v. Inland Industries Limited, [1974] S.C.R. 514; Joseph Granger v. Employment and Immigration Commission, [1986] 3 F.C. 70; Joseph Granger v. Canada Employment and Immigration Commission, [1989] 1 S.C.R. 141.*

Appeal No. AP-89-033

CHARCO INDUSTRIES

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding Member
ARTHUR B. TRUDEAU, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This appeal is filed pursuant to section 81.19 of the *Excise Tax Act*¹ (the Act) against a decision of the Minister of National Revenue (the Minister), which dismissed the objection of the appellant that challenged the Notice of Assessment dated August 12, 1987.

ISSUES AND APPLICABLE LEGISLATION

This appeal raises two issues. First, do the sales made by the appellant satisfy the conditions outlined in subparagraph 1(a)(i), Part XIII, Schedule III to the Act, specifically, were these sales made to persons engaged in the production of goods. Second, does the fact that the appellant received incorrect information from the officials of the respondent entitle it to this or any other exemption provided for in the Schedule.

For the purposes of this appeal, the relevant legislation is as follows:

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

[added on December 19, 1986, S.C. 1986, c. 54, s. 4]

51.(1) The tax imposed by section 50 does not apply to the sale or importation of the goods mentioned in Schedule III, other than those goods mentioned in Part XIII of that Schedule that are sold to or imported by persons exempt from consumption or sales tax under subsection 54(2).

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

*Schedule III
Part XIII*

PRODUCTION EQUIPMENT, PROCESSING MATERIALS AND PLANS

1. All the following:

(a) machinery and apparatus sold to or imported by manufacturers or producers for use by them directly in

(i) the manufacture or production of goods,

...

FACTS

On August 12, 1987, the Deputy Minister of National Revenue, Customs and Excise, sent the appellant a notice of assessment for the period from November 19, 1986, to May 31, 1987, requesting the payment of \$9287.66, including interest and a fine. The same day, the appellant objected to this assessment on the grounds that the information supplied by the respondent's officials was to the effect that the tomato stakes sold by the appellant were exempt from the sales tax and that the prices charged for these goods were established accordingly. On March 8, 1989, the Minister dismissed the appellant's notice of objection and confirmed the notice of assessment since, in the opinion of the Minister, the sales to which the assessment applied had been made to true retailers and not to farmers or greenhouse operators. It is this decision that the appellant is appealing to the Tribunal.

ARGUMENTS

The appellant did not file a brief with the Tribunal and, consequently, prior to the hearing, its sole basis of argument was the reasons given for the objection to the notice of assessment.

In his brief, the respondent claimed that the appellant, as a manufacturer or producer, is subject to the sales tax, that he was unaware of the verbal ruling to which the appellant refers, but that such information would not, according to jurisprudence, be binding on the respondent and that, lastly, the appellant did not satisfy the conditions outlined for the exemption it was seeking.

At the hearing, the appellant was represented by its President, Mr. Claude Chartrand. The latter also testified to explain the manufacturing process of the goods in question, the operations of his company, the products it manufactured at various times and, lastly, how it began manufacturing the tomato stakes. Mr. Chartrand also recounted his discussions with the officials of the Department of National Revenue (the Department), including a telephone conversation in which one such official apparently stated that the goods the appellant was producing were exempt from sales tax.

During cross-examination by counsel for the respondent, the witness indicated that he did not remember the exact date that he had spoken with the officials, but that it was toward the end of 1985 while planning for production in 1986. Mr. Chartrand also admitted having received letters from the

Department, copies of which were placed in the file, stating that, according to the Act, he was a producer or manufacturer.

During the presentation made by Mr. Chartrand as representative of the appellant, the witness based his argument on the facts that were presented during his testimony and left it to the Tribunal to decide.

Counsel for the respondent argued that even the first letter received by the appellant from the respondent showed that the respondent always viewed the appellant as being engaged in the production of goods subject to the tax, since that is precisely what the letter stated.

Counsel for the respondent also cited a number of cases including the decision of the Supreme Court of Canada in the *Inland*² case and quoted the passage in which the Court concluded:

*However, it seems clear to me that the Minister cannot be bound by an approval given when the conditions prescribed by the law were not met.*³

The respondent therefore asks the Tribunal to find that the Act remains applicable in spite of the fact that the appellant may have received incorrect information from the respondent's officials.

REASONS

On the first issue, the Tribunal is of the view that the facts clearly show that the appellant is not entitled to the deduction set forth in subparagraph 1(a)(i), Part XIII, Schedule III to the Act since tomato stakes were not sold to manufacturers or producers to be used by them directly in the production of goods. Moreover, the appellant did not convince the Tribunal, nor do the facts placed in evidence support the claim, that it may receive any other exemption.

On the second issue, the Tribunal reiterates that it cannot base its decision on the grounds of fairness and that it must apply the law. The Tribunal also repeats the words of Lacombe J. in the *Granger*⁴ case who, although that case did not involve legislation of a fiscal nature, referred to the *Inland* case in these terms:

*In Canadian tax law, the courts have consistently held that the Crown is not bound by the representations made and interpretations given to taxpayers by authorized representatives of the Department, if such representations and interpretations are contrary to clear and peremptory provisions of the law: Woon, Bert W. v. Minister of National Revenue, [1951] Ex. C.R. 18, Stickel v. Minister of National Revenue, [1972] F.C. 672 (T.D.), M.N.R. v. Inland Industries Limited, [1974] S.C.R. 514. The decision of the Supreme Court of Canada in the last case is still binding and must be followed by this Court until the Supreme Court itself has decided to overrule it...*⁵

2. *Minister of National Revenue v. Inland Industries Limited*, [1974] S.C.R. 514.

3. *Ibid.*, at page 523.

4. *Joseph Granger v. Employment and Immigration Commission*, [1986] 3 F.C. 70.

5. *Ibid.*, at page 86.

The learned judge goes on to cite the same extract of the Honourable Judge Pigeon as cited by counsel for the respondent in support of his position. The Tribunal notes that the Supreme Court, when called upon to rule on the decision of the Federal Court, dismissed the appeal of Granger outright and upheld the decision of the court.⁶

In light of these authorities, the Tribunal is of the view that it cannot overrule the text of the Act even if the respondent's officials did provide incomplete and incorrect information to the appellant.

CONCLUSION

Given the responses to the two issues, the Tribunal dismisses the appeal.

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Michèle Blouin

Michèle Blouin
Member

6. *Joseph Granger v. Canada Employment and Immigration Commission*, [1989] 1 S.C.R. 141.