

Ottawa, Monday, January 20, 1992

**Appeal No. AP-89-269**

IN THE MATTER OF an appeal heard on October 3, 1991,  
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 December 22, 1989, with respect to a  
notice of objection served under section 81.15 of the *Excise  
Tax Act*.

**BETWEEN**

**PANEL PRODUCTS, DIVISION OF  
COMPONENT STRUCTURES (1981) LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed. Revenue Canada officials were entitled to act on behalf of the Minister of National Revenue in giving approvals, pursuant to section 48 of the *Excise Tax Act*, without any formal delegation from the Minister, because the Minister had not at that time exercised the option of making regulations to designate any officials or classes of officials to act for him in these matters.

John C. Coleman  
John C. Coleman  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

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

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-89-269**

**PANEL PRODUCTS, DIVISION OF  
COMPONENT STRUCTURES (1981) LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*This appeal deals, firstly, with whether Revenue Canada officials are entitled to act in the name of the Minister of National Revenue without any formal delegation of authority, and, secondly, if they are not so entitled, whether, once they have received this delegation, their attempts to confirm earlier actions are sufficient to cure any defects arising from the improper delegation of authority.*

**HELD:** *The appeal is dismissed. Revenue Canada officials were entitled to act on behalf of the Minister of National Revenue without any formal delegation from the Minister, because the Minister had not, at that time, exercised the option of making regulations to designate any officials or classes of officials to act for him in these matters.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: October 3, 1991*  
*Date of Decision: January 20, 1992*

*Tribunal Members: John C. Coleman, Presiding Member*  
*Arthur B. Trudeau, Member*  
*Robert C. Coates, Q.C., Member*

*Counsel for the Tribunal: Clifford Sosnow*

*Clerk of the Tribunal: Nicole Pelletier*

*Appearances: Michael Kaylor, for the appellant*  
*Meg Kinnear, for the respondent*

**Appeal No. AP-89-269**

**PANEL PRODUCTS, DIVISION OF  
COMPONENT STRUCTURES (1981) LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: JOHN C. COLEMAN, Presiding Member  
ARTHUR B. TRUDEAU, Member  
ROBERT C. COATES, Q.C., Member

**REASONS FOR DECISION**

This is an appeal pursuant to section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act), for a review of the refusal of the Minister of National Revenue (the Minister) to refund sales tax claimed to be paid in error.

The appellant, which is the holder of a manufacturer's sales tax license under the Act, had requested on two occasions that it be considered, under section 48 of the Act, to be the manufacturer of "similar goods" to those it produced itself and which it sold in conjunction with goods of its own manufacture.

On both occasions, officials of National Revenue, Customs and Excise (Revenue Canada), approved the appellant's application, even though the Minister had not yet formally delegated that authority to them. Once the Minister delegated this authority to his officials, they confirmed the approvals under section 48 to the appellant.

The appellant later appealed what it considered to be an overpayment of tax on the grounds that section 48 expressly mentions that "the Minister" approves or rejects applications with respect to "similar goods" and that any approvals made on his behalf by officials to whom he had not formally delegated his authority could have no validity.

The provisions of the Act, relevant to this appeal, are as follows:

*48. (1) Any licensed manufacturer may make an application in writing to the Minister to be considered, for the purposes of this Act, as the manufacturer or producer of all other goods, in this section ... referred to as "similar goods", that the licensed manufacturer sells in conjunction with his sales of goods of his manufacture or production in Canada or that are of the same class as goods the licensed manufacturer manufactures or produces in Canada.*

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

(2) *The Minister may at any time request an applicant under this section to supply additional information in respect of his application.*

(3) *On receiving an application, the Minister shall decide whether to approve or reject the application and shall send to the applicant a notice in writing setting out his decision and, where the Minister approves the application, the date on and after which the approval is effective.*

(4) *Subject to subsection 49(2), on and after the date set out in a notice of decision pursuant to subsection (3), the applicant shall be deemed to be the manufacturer or producer of all similar goods that the applicant sells and those goods shall be deemed to be*

*(a) at the time the applicant acquires them,*

*(i) ... partly manufactured goods, and*

*...*

*(b) thereafter, goods produced or manufactured in Canada.*

**59.** *(1) The Minister of Finance or the Minister of National Revenue, as the case may be, may make such regulations as he deems necessary or advisable for carrying out the provisions of this Act.*

*(2) The Minister may, by regulation, authorize a designated officer or officer of a designated class of officers to exercise powers or perform duties of the Minister, including judicial or quasi-judicial powers or duties, under this Act.*

The Delegation of Powers Regulations<sup>2</sup> (the Regulations) under the Act, as amended December 15, 1987, are also relevant to this appeal.

The issues in this case are, firstly, whether the Revenue Canada officials were entitled to act in the name of their Minister without any formal delegation of authority, and, secondly, if they were not so entitled, whether, once they had received this delegation, their attempts to confirm the approvals they had given earlier were sufficient to cure any defects in the initial approvals.

The parties agreed on the following facts:

1. At all times relevant to this appeal, the appellant held a manufacturer's sales tax license under the Act for the manufacture of laminated tackboards, whiteboards, chalkboards and decorative vinyl covered wall panels.
2. On January 20, 1986, the appellant applied for permission to be considered the manufacturer of other "similar goods", i.e., decorative high-pressure plastic laminate panels, vinyl and wood edging tape, under section 26.1 (now section 48) of the Act.
3. On January 27, 1986, Adrienne Adair, an employee in the Tax Interpretations, Excise Branch of Revenue Canada, wrote a letter to the appellant, giving it the permission

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2. SOR/88-1, Canada Gazette, Part II, January 6, 1988.

sought. As a result, effective February 1, 1986, the appellant was the deemed manufacturer of the "similar goods" and was entitled to account for federal sales tax on the selling price of the goods rather than on its cost of acquisition.

4. On May 30, 1986, the appellant again made an application to be considered the manufacturer of other "similar goods" (in this case, adhesives and drawer slides). By a letter dated June 26, 1986, Ms. Adair gave this permission, effective June 1, 1986.
5. On the dates of both approvals, the powers exercisable under section 48 of the Act had not been formally delegated to Ms. Adair or any other Revenue Canada officials in accordance with the Regulations of the Minister.
6. On December 15, 1987, the Regulations were amended to expressly delegate the powers conferred by section 48 of the Act. One of the officials delegated to exercise this power was Mr. H.R. Carvalho.
7. In a letter dated April 27, 1988, Mr. Carvalho wrote the appellant to " ... confirm the contents of our letter to you dated June 26, 1986 ... " (That letter written by Ms. Adair had approved adhesives and drawer slides as "similar goods" and had referred to the list of "similar goods" already authorized by her letter of January 27, 1986.) Mr. Carvalho's letter mentioned all the goods to which the section 48 permission applied, " ... namely decorative high pressure plastic laminate panels, vinyl and wood edging tape, adhesives, drawer slides." It concluded by saying that "The conditions outlined in our original letter will continue to apply."
8. On January 18, 1989, the appellant filed a refund claim for \$77,603.52 in federal sales tax overpaid, arguing that the approval under section 48 of the Act was invalid. Revenue Canada rejected the appellant's claim and its subsequent objection. On January 26, 1990, the appellant appealed the Minister's decision to this Tribunal.
9. Since it received the approvals of January 27, 1986, and June 26, 1986, the appellant continued to pay federal sales tax on the selling price of the "similar goods" as if the approvals were effective. At no time did the appellant ask Revenue Canada to revoke the approvals.

Counsel for the appellant made three main arguments.

Firstly, he argued that Ms. Adair's two approvals were a "nullity" because, at the time she gave them, the Minister had not expressly delegated the authority to exercise his powers under section 48 to her or to any other official. The principle enunciated in the leading case of *Carltona, Ltd. v. Commissioners of Works and Others*,<sup>3</sup> that government officials may act in the name of their minister without any formal delegation of authority could not apply in the present appeal. This was because section 59 of the Act specifically provided that, if the Minister was to delegate his powers, he was to do so by regulation. Such an express provision on the manner and form of delegation excluded the possibility of any implicit delegation by the Minister. If the Minister did not delegate his authority under section 48 by regulation, then he was obliged to exercise it personally.

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3. [1943] 2 All E.R. 560, at 563.

Furthermore, counsel argued that section 48 did not describe the sort of functions of a purely administrative character that the Minister might implicitly delegate. Decisions on whether goods were of the "same class" involved complex judgments that were more of a quasi-judicial than of an administrative character.

Secondly, the appellant's counsel argued that Mr. Carvalho's letter of April 27, 1988, was not sufficient to give approval to the appellant's earlier application under section 48. To be effective, the Carvalho letter would have had to refer not simply to the Adair correspondence, but also itself meet the statutory directives of section 48, including sending a notice setting out his decision and indicating the effective date of approval. Thus, the Carvalho letter was itself a "nullity" and could not correct the earlier nullity.

Finally, counsel argued that the appellant could not be estopped from seeking relief from the alleged error of Revenue Canada, even if it had not subsequently asked Revenue Canada to revoke the section 48 approvals. He reminded the Tribunal of decisions it had taken that insisted on the strict application of the law, even when Revenue Canada had misinformed taxpayers about their obligations.

Counsel for the respondent made two main arguments.

Her main submission was that the *Carltona* principle gave Ms. Adair the necessary authority to act for the Minister, even without an express delegation of his authority under section 48.

She pointed out that section 48 was a *pro forma* administrative authority of the sort Parliament would not have expected the Minister to exercise personally. It covered routine decisions on classes of goods and did not involve quasi-judicial aspects, such as public hearings before a decision was reached, the rights and obligations of persons, an adversary process or public interest questions. All that it covered was an administrative decision to allow a license holder to account for federal sales tax in one manner rather than another.

Counsel for the respondent argued that the Minister had three options: to exercise the authority himself, to delegate it to an officer or class of officers or, without any express delegation, to permit officials to act in his name. Subsections 59(1) and (2) did not require him to make regulations or to delegate his authority formally, although it gave him the option to do so. Where he had not delegated his authority formally to any official or class of officials, it was permissible for officials, including Ms. Adair, in this case, to act in his name. Counsel contrasted this with the situation where the Minister had delegated his authority formally and Ms. Adair had not been specifically named or formed part of the named class of officials. In this situation, the *Carltona* principle would not have applied; Ms. Adair could not have acted in the name of the Minister. Further, the decision in *Canron Inc. v. The Deputy Minister of National Revenue for Customs and Excise*<sup>4</sup> is distinguishable from the present situation. In that case, the power exercised by the delegate had been expressly delegated by statute, and the official exercising that power was not listed on the schedule of authorized delegates.

Counsel for the respondent also argued that the appellant had acted on Ms. Adair's approvals and, even up to the hearing date, had not asked for a revocation of the approvals.

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4. (1986) 11 T.B.R. 208.

The second major argument of the respondent's counsel was that, if the Tribunal found that Ms. Adair's approvals were invalid, it should still find that Mr. Carvalho's letter of April 27, 1988, was sufficient to remedy the defect. In any case, she suggested that Mr. Carvalho had acted only for greater certainty and not to remedy any mistake. She also argued that his letter had met the requirements of section 48, not simply by referring to the Adair correspondence, but also by incorporating its content in naming all of the goods to which the approvals applied and stating that the conditions outlined originally continued to apply. She argued that, first, Ms. Adair, then Mr. Carvalho had acted with due diligence and that this was demonstrated by the appellant's original and continued acceptance of the approvals, which they had issued and confirmed.

The Tribunal rejects the appeal for the following reasons.

The Tribunal finds that the approval procedures of section 48 are, by nature, routine and administrative rather than complex and quasi-judicial. Parliament could not have expected that the Minister would carry out himself such a multitude of routine tasks as would be necessary under section 48. The Minister is vested with various powers, large and small, quasi-judicial and administrative, throughout the Act. This is in keeping with the doctrine of ministerial responsibility. The same convention allows the Minister's officials to act in his name in situations where this is necessary and advisable. Their authority comes from the Minister, who retains responsibility for their actions. If they act wrongly, the Minister may discipline them, but he must answer for their mistakes as if they were his own.

Subsections 59(1) and (2), dealing with regulation making and the delegation of powers, are permissive rather than mandatory. With respect to regulation making, subsection 59(1) indicates that the Minister " ... may make such regulations as he deems necessary or advisable ... " (emphasis added). With respect to delegation, subsection 59(2) is also voluntary: the Minister "... may, by regulation ... " delegate to certain officers or a class of officers his duties, " ... including judicial or quasi-judicial powers or duties.... " Having regard to the scheme of the Act and the nature of ministerial responsibility, the Tribunal does not consider that subsection 59(2) is intended to restrict the Minister to the choice of expressly delegating his duties or exercising them by himself. Rather, subsection 59(2) should be understood as meaning that when the Minister decides to make an express delegation of his powers and duties, he should do so by regulation. Subsection 59(2) also makes specific mention of the Minister's judicial or quasi-judicial powers or duties, thus implying that these, as opposed to administrative functions, are matters where he may find it necessary or advisable to make express delegations.

In the present case, at the time Ms. Adair acted on his behalf, the Minister had not delegated expressly to any officials or classes of officials his duties under section 48. In such a situation, the Tribunal considers that the *Carltona* principle fully applies and that Ms. Adair could act legitimately on behalf of the Minister in carrying out this administrative function. Furthermore, the appellant acted on the approvals given by Ms. Adair, and, to the day of the Tribunal's hearing, had not sought their revocation. If, however, the Minister had made a formal delegation of his duties under section 48 to officials or classes of officials which did not include Ms. Adair, then the appellant would have had good reason to question whether she had the authority to act for him had she done so.

Because the Tribunal finds that Ms. Adair was entitled to act for the Minister in giving the original approvals under section 48, it is not necessary to decide whether the subsequent confirmation of those approvals by Mr. Carvalho was necessary and sufficient to correct any defect in the original approvals.

In sum, the Tribunal finds that Ms. Adair, the Revenue Canada official, was entitled to act on behalf of the Minister in giving the section 48 approvals, without any formal delegation from the Minister, because the Minister had not, at that time, exercised the option of making regulations to designate any officials or classes of officials to act for him in these matters. If he had exercised that option, then only officials or classes of officials which he had designated could have carried out his section 48 powers.

In view of the foregoing, the appeal is dismissed.

John C. Coleman  
John C. Coleman  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

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