



Ottawa, Tuesday, March 10, 1992

**Appeal No. AP-89-233**

IN THE MATTER OF an appeal heard on October 24, 1991,  
under section 51.19 of the *Excise Tax Act*, R.S.C., 1970,  
c. E-13, as amended;

AND IN THE MATTER OF a decision of the Minister of  
National Revenue dated August 15, 1989, relating to a notice  
of objection served under section 51.15 of the *Excise Tax Act*.

**BETWEEN**

**ERIN MICHAELS MFG. INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed. The goods in issue should be exempt from federal sales tax by virtue of subsection 29(1) of the *Excise Tax Act* and the *Regulations Respecting the Determination of Clothing and Footwear for the Purposes of Part XV of Schedule III to the Excise Tax Act*.

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-89-233**

**ERIN MICHAELS MFG. INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant carries on a manufacturing business in Red Deer, Alberta, where it produces the goods in issue. The bows are made of fabric which the appellant acquires from various producers who also supply the same or similar material to clothing manufacturers. The intent is to ensure that the finished bow coordinates with the garments with which it is worn. The bows are attached either to a metal clip or to an elastic band (the fasteners). They are only sold by the appellant through retail outlets ranging from dress shops to variety and drug stores.*

*The issue in this appeal is whether the bows manufactured by the appellant are exempt from federal sales tax by virtue of subsection 29(1) of the Excise Tax Act and the Regulations Respecting the Determination of Clothing and Footwear for the Purposes of Part XV of Schedule III to the Excise Tax Act (the Regulations).*

**HELD:** *The appeal is allowed. The Tribunal finds that the bows are "accessories" within the meaning of paragraph (k) of the Regulations in question and are thus exempt from federal sales tax by virtue of subsection 29(1) of the Excise Tax Act.*

*Place of Hearing: Calgary, Alberta*  
*Date of Hearing: October 24, 1991*  
*Date of Decision: March 10, 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: H. George McKenzie, for the appellant*  
*Linda J. Wall, for the respondent*

**Appeal No. AP-89-233**

**ERIN MICHAELS MFG. INC.**

**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 under section 51.19 of the *Excise Tax Act*<sup>1</sup> (the Act) from a notice of decision by the Minister of National Revenue (the Minister) dated August 15, 1989, disallowing a refund of federal sales tax paid by the appellant in respect of certain hair bows, head bands, bow ties and hair collar twisters.

The appellant carries on a manufacturing business in Red Deer, Alberta, where it produces the goods in issue. The bows are made of fabric which the appellant acquires from various producers who also supply the same or similar material to clothing manufacturers. The intent is to ensure that the finished bow coordinates with the garments with which it is worn. The bows are attached either to a metal clip or to an elastic band (the fasteners). They are only sold by the appellant through retail outlets ranging from dress shops to variety and drug stores.

The issue in this appeal is whether the bows manufactured by the appellant are exempt from federal sales tax by virtue of subsection 29(1) of the Act and the *Regulations Respecting the Determination of Clothing and Footwear for the Purposes of Part XV of Schedule III to the Excise Tax Act*<sup>2</sup> (the Regulations).

The imposition provision in the Act is contained in section 27. In essence, the section imposes a tax on the sale price of all goods produced or manufactured in Canada or imported into Canada. In this light, the sale of bows by the appellant attracts the application of section 27 unless there is a provision that exempts it from liability to taxes.

Subsection 29(1) of the Act provides that the tax imposed by section 27 is not to be applied to the goods mentioned in Part XV, Schedule III.

*SCHEDULE III*

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1. R.C.S. 1970, c. E-13, as amended.
  2. SOR/84-247 (Canada Gazette, April 4, 1984, p. 1232).

PART XV

CLOTHING AND FOOTWEAR

1. *Clothing and footwear, including articles and materials for incorporation in home or commercial production thereof, as the Governor in Council may determine by regulation.*

...

The relevant portion of the Regulations provides that:

*REGULATIONS RESPECTING THE DETERMINATION  
OF CLOTHING AND FOOTWEAR FOR THE PURPOSES OF  
PART XV OF SCHEDULE III TO THE EXCISE TAX ACT*

...

2. *For the purposes of Part XV of Schedule III to the Excise Tax Act, it is determined that clothing and footwear includes*

...

*(b) wearing apparel such as blazers, blouses, dresses, evening gowns, jeans, jump suits, kilts, pants, shirts, shorts (including Bermuda, Jamaica and gym), ski suits, skirts, slacks, snowmobile suits, sport coats, suits, sweat suits, sweaters, trousers, tuxedos and vests,*

...

*(f) headwear such as balaclavas, cap covers, caps, ear muffs, hats, hoods, knitted headwear, night caps, rain bonnets, shower caps, toques, uniform hats and caps,*

...

*(k) miscellaneous clothing and accessories such as bathrobes, bathing suits, beach wear, belts, dusters, garter belts, gloves, house coats, mitts, neckties, night gowns, pyjamas, scarves, smoking jackets and suspenders,*

*but does not include*

...

*(p) goods that are for cosmetic, prosthetic or sanitary purposes such as disposable bibs for restaurants and dental offices, hair bands, hair nets, hairpieces, medical appliances, removable sweat pads, sanitary napkins and belts, shampoo caps and capes and tampons;*

*(q) goods that are for use with clothing and footwear such as crowns,*

*equipment carrying harnesses, handbags, pennants, purses, sceptres, shields, umbrellas, wallets and other garnishments used as trimmings for clothing and footwear;*

...

(Emphasis added)

Mr. Michael Connelly, president of the appellant company, appeared as a witness. Mr. Connelly testified that the business was started in 1986 mainly to manufacture bows to coordinate with various garments. At the beginning of each season, the company acquires fabric from ribbon companies and the different textile mills to ensure that its bows will coordinate with dresses or blouses produced by other manufacturers. Mr. Connelly described the manufacturing process involved for a group of the bows and their fasteners (Exhibit A-1) and how they might be used or worn by a purchaser. Mr. Connelly noted that the bows are principally designed "much like a hat" to be worn on the head, although they have no control over where a person might actually wear them. He told the Tribunal that they were also worn as a bow tie or to achieve a scarf effect, or as a ruffle on the front of a blouse. In response to questions from counsel for the respondent, Mr. Connelly stated that, although the bows were intended to be used with clothing, he was surprised sometimes to see how people wore them and that, in his view, the bows were an extension of a garment.

Counsel for the appellant first argued that the principal use or function of the bows is for attachment to the hair to "complement the clothing and give a dressed-up look." He noted that the bows are made from the same material as dresses and blouses since it is obtained from the same manufacturers that supply the material for dresses and blouses. He concluded that the bows primarily function as part of a woman's wearing apparel and, thus, should either be considered as "wearing apparel" or as "miscellaneous clothing" under paragraph (b) or (k) of the Regulations. In the alternative, he argued that they should be treated either as "headwear" or as "accessories" under paragraph (f) or (k) of the Regulations.

As part of his argumentation, counsel for the appellant took the position that the word "includes" in the Regulations and the words "such as" in paragraphs (a) to (k) of the Regulations should be interpreted in an expansive manner - a position with which counsel for the respondent concurred - to support his view that the Regulations were merely illustrative and not all embracing. As such, the bows themselves were "clothing" according to the ordinary meaning of that word and, thus, exempt from the sales tax.

Counsel for the respondent, on the other hand, argued that the goods in question fall more properly into either paragraph (p) or (q) of the Regulations as goods not included as "clothing" and, as such, are liable to tax. Counsel noted that the appellant, in cross-examination, confirmed that the bows were intended to be used with clothing and, as such, were not clothing *per se*. For this reason and the fact that they might be used to accessorize clothing, counsel argued that the bows should first fall under paragraph (q) of the Regulations. In the alternative, counsel noted that paragraph (p) included an item called "hair bands" and that the bows in question are the same type as those products used for cosmetic purposes.

The Tribunal has carefully examined the evidence and argumentation put before it in this case and has concluded that the appeal should be allowed. In its view, the words "including" and "such as" in

these particular Regulations are clearly meant to be illustrative, as it would be unreasonable to expect the legislator to list every conceivable article that might or might not be considered as clothing in a document of this nature. At the same time, the Tribunal is in agreement with counsel for the respondent that one cannot treat these words as being expansive in one part of the Regulations and restrictive in the other. It seems to the Tribunal that the Regulations attempt to set up two classes of goods, the first in paragraphs (a) through (k) illustrating the general nature of goods that would normally be regarded as clothing and the second in paragraphs (l) through (s) that do not fall within the usual category of clothing.

The Tribunal's decision, accordingly, is based on the evidence and facts as it sees them. First, the Tribunal cannot agree with counsel for the appellant that the bows in question are "clothing" in the ordinary sense of the word. Clothing, by its nature, is intended to cover and adorn the body. It may be purely functional and practical, or it may be designed to highlight certain features of the body, perhaps in a very impractical manner. In many respects, its utility, if any, may be only in the mind of the person wearing it. Nonetheless, it stretches one's imagination to suggest that a bow to be placed in the hair constitutes clothing in the ordinary sense of the meaning of that word. On the other hand, the Tribunal is prepared to accept that the bows are "accessories" within the meaning of paragraph (k) on the grounds that they are worn on the person (in the hair or other places), they are designed to complement and are made from the same fabric as other wearing apparel, they are sold in certain dress shops to match a dress or blouse and are viewed by women as something more than a hair band. For these reasons, the Tribunal accepts that the bows are more properly categorized as accessories than as goods that are for cosmetic, prosthetic or sanitary purposes or goods that are garnishments used as trimming for clothing.

The appeal is allowed.

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