



Ottawa, Monday, April 27, 1992

Appeal No. AP-90-083

IN THE MATTER OF an application heard on February 27, 1992, 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 May 28, 1990, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

RESSOURCES MÉDIA INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. Part of the application for refund by the appellant is covered by a time limit set forth in section 68 of the *Excise Tax Act*. As for the remainder of the period covered by the application, the Tribunal concludes that the evidence collected shows that there was no error within the meaning of the above-mentioned provision.

Michèle Blouin
Michèle Blouin
Presiding Member

John C. Coleman
John C. Coleman
Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-083

RESSOURCES MÉDIA INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant operates an advertising agency and produces layouts, photo-ready copy, brochures and posters. The appellant claims that it applied for and obtained a manufacturer's licence under the Excise Tax Act (the Act) because of incorrect information received from the respondent's officials. For the period at issue, the appellant claims that it was a small manufacturer within the meaning of the Act and its regulations, and that it was not required to pay the federal sales tax. It therefore requests a refund, under section 68 of the Act, of the sales tax that it allegedly paid in error.

HELD: *The appeal is dismissed. The tax refund is only possible in this instance under section 68 of the Act. This section sets forth a two-year time limit which this tribunal cannot disregard. As for the period of the refund application that is not covered by the time limit, the evidence presented does not allow the Tribunal to conclude that there was an error within the meaning of the above-mentioned provision.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: February 27, 1992
Date of Decision: April 27, 1992*

*Tribunal Members: Michèle Blouin, Presiding Member
John C. Coleman, Member
Arthur B. Trudeau, Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Dyna Côté

*Appearances: Danielle Giroux, for the appellant
Christine Hudon, for the respondent*

Appeal No. AP-90-083

RESSOURCES MÉDIA INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
JOHN C. COLEMAN, Member
ARTHUR B. TRUDEAU, Member

REASONS FOR DECISION

This is an appeal filed under section 81.19 of the *Excise Tax Act*¹ (the Act) with respect to a determination rendered under section 81.17 of the Act.

The appellant operates an advertising agency and produces layouts, photo-ready copy, brochures and posters. On May 17, 1985, it applied for a manufacturer's licence under the Act, indicating an estimated annual volume of sales of \$110,000. One of the appellant's administrators indicated on the application a volume of sales of \$73,196.62 for the previous 12 months. The appellant was subsequently issued a licence on June 12, 1985. On October 26, 1989, the appellant submitted an application for refund of federal sales tax in the amount of \$6,954.07 for the period from October 1, 1985, to October 31, 1987. It alleged that the issuance of the licence was not necessary since the value of the taxable goods did not exceed \$50,000 and that it should therefore have been eligible for the sales tax exemption under the *Small Manufacturers or Producers Exemption Regulations*² (the Regulations). On December 5, 1989, the Deputy Minister of National Revenue, Customs and Excise, rejected the refund application. Lastly, on May 28, 1990, the respondent rendered a notice of decision supporting the notice of determination and rejecting the notice of objection served by the appellant on December 18, 1989.

The issue in this appeal is whether, under section 68 of the Act, the appellant is entitled to a refund of the federal sales tax even if, during the period at issue, it held a manufacturer's licence issued in accordance with the Act.

During the hearing, the Tribunal heard the testimony of Mrs. Lucie Brindamour, the appellant's administrator. She explained that Mr. Gérald Baril, a writer-designer with the appellant, had initiated proceedings in 1985 with the Department of National Revenue (Revenue Canada) to determine whether the appellant was required to hold a manufacturer's licence under the Act. According to Mrs. Brindamour, Mr. Baril did not have any special knowledge of the application of the Act and related obligations. She therefore took it upon herself to handle all subsequent dealings with Revenue Canada. According to her testimony, it was never indicated in her telephone conversations with Revenue Canada officials, nor during meetings, that

1. R.S.C., 1985, c. E-15, as amended.
2. SOR/82-498.

only the volume of taxable sales, and not the turnover, was relevant in determining whether a licence was required. However, she also stated that it was easy to see that the appellant was engaged in activities with little relation to manufacturing, since it mainly billed fees and had work performed by other producers (for example, printers). Mrs. Brindamour therefore concluded that the appellant had been prejudiced because its invoicing and its bids reflected the sales tax rate. In response to a question from the Tribunal regarding the fees charged or the printed material received from printers, Mrs. Brindamour mentioned that the appellant never remitted any amount as tax to Revenue Canada.

The respondent called Mr. Pierre Gauthier, an auditor with Revenue Canada, to testify. Mr. Gauthier explained the process for issuing the appellant's licence. After the form was submitted by Mr. Baril on March 17, 1985, a clerk from Revenue Canada conducted an investigation on June 12, 1985, at the appellant's place of business. The report from this meeting indicated taxable goods in the amount of \$90,000. On October 31, 1985, after the issuance of the licence, Mr. Gauthier stated that he went to the appellant's place of business as part of an information service offered to taxpayers. In the report filed after this visit, Mr. Gauthier indicated an amount of \$70,000 in manufactured goods which he described as being generated from advertising design. He also indicated amounts of \$10,000 and \$20,000 as goods destined for resale (for example, printed material) and professional fees, respectively. According to Mr. Gauthier, a distinction was made between the taxable goods, those which were not taxable and the services provided by the appellant. The witness explained that these distinctions were in keeping with an internal working document that auditors had used since 1980. During cross-examination, Mr. Gauthier stated that the data and figures in his report came from information provided by the person contacted at that time, that is, Mrs. Brindamour. In a letter dated November 8, 1985, which was sent to the latter, Mr. Gauthier summarized the meeting of October 31 and identified the appellant's tax obligations. In response to a question from the Tribunal, the witness stated that the appellant, under Memorandum ET 104 concerning "small manufacturers," could have requested that its licence be cancelled before the end of the calendar year if the taxable goods sold had been less than \$50,000.

In presenting her arguments, the representative for the appellant claimed that the latter had met the criteria set forth for eligibility for the refund. She claimed that Revenue Canada's representatives had forced the appellant to apply for the licence. Moreover, she explained that these officials had never clearly explained the distinction between "taxable goods" and "turnover." She also argued that the appellant was not in a position to request the cancellation of the licence within the prescribed time frame, specifically by the end of the calendar year, because of the poor information received from Revenue Canada. Lastly, she claimed that the prescribed time limit of two years stipulated in section 68 of the Act could not be applied because the loss of status as a "small manufacturer" allegedly resulted from the error by Revenue Canada's officials.

For its part, the respondent presented several arguments against the appellant's claims. Among the arguments presented, the Tribunal primarily relies upon that relating to the stipulated time limit.

In fact, a cash refund of the tax is only possible under section 68. The Tribunal cannot, therefore, overlook the fact that this provision stipulates that the refund application must be made within the two years following payment of moneys for which a refund is requested. Since the appellant's application for a refund is dated October 26, 1989, it is therefore prescribed for the period prior to October 26, 1987.

As for the remainder of the period covered by the application for refund, that is, only a few days, the Tribunal finds that the evidence collected does not allow it to conclude that an error was made within the meaning of the above-mentioned provision. According to the evidence, the appellant's administrators had many opportunities to correct the appellant's status under the Act. This correction could have been made before or after the issuance of the licence, but nothing was done. Moreover, the fact that the appellant might have been able to benefit from the status of "small manufacturer" during the period at issue does not necessarily indicate that an error was made within the meaning of the Act. Licensed under the Act, the appellant was required to pay the federal sales tax on the goods that it manufactured, which it did according to the testimony of one of its administrators and employees. The amounts paid by the appellant and which it accounted for as taxes were therefore not paid in error and, consequently, the appellant cannot obtain a refund.

For these reasons, the appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

John C. Coleman
John C. Coleman
Member

Arthur B. Trudeau
Arthur B. Trudeau
Member