



Ottawa, Tuesday, May 19, 1992

Appeal No. AP-90-012

IN THE MATTER OF an appeal heard on February 13, 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 March 14, 1990, with respect to a notice of opposition served under section 81.15 of the *Excise Tax Act*.

BETWEEN

PIERRE ROBERGE

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal finds that the appellant is personally liable for the assessed sales tax against the three corporate names, "Supertrim," "Intertrim" and "Trimit."

John C. Coleman
John C. Coleman
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Desmond Hallissey
Desmond Hallissey
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-012

PIERRE ROBERGE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant is the sole shareholder and administrator of the companies entitled "Intersplice Inc." and "Interveneer Ltée." On March 12, 1986, he filed and registered with the Superior Court, District of Montréal, a declaration of corporate names attesting to his intention to do business in the field of manufacturing wood or melamine edging and wood veneer sheets under the corporate names of "Supertrim," "Intertrim" and "Trimit."

The issue is to determine who, either the appellant or his two companies, must be held liable for the sales tax assessed against the three corporate names in question.

HELD: *The appeal is dismissed. The Tribunal finds that the appellant is personally liable for the sales tax assessed against the three corporate names in question.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 13, 1992
Date of Decision: May 19, 1992

Tribunal Members: John C. Coleman, Presiding Member
Michèle Blouin, Member
Desmond Hallissey, Member

Legal Section: France Deshaies

Clerk of the Tribunal: Dyna Côté

Appearances: Guy C. Gervais, for the appellant
Rosemarie Millar, for the respondent

Appeal No. AP-90-012

PIERRE ROBERGE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
MICHÈLE BLOUIN, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act).

On March 2, 1988, the appellant was assessed \$19,817.32, including taxes, penalty and interest, for the period from January 15, 1987, to July 31, 1987. On March 24, 1988, the appellant opposed the assessment, which was subsequently confirmed by the respondent on March 14, 1990.

The appellant is the sole shareholder and administrator of the companies entitled "Intersplice Inc." and "Interveneer Ltée." On March 12, 1986, he filed and registered with the Superior Court, District of Montréal, a declaration of corporate names attesting to his intention to do business in the field of manufacturing wood or melamine edging and wood veneer sheets under the corporate names of "Supertrim," "Intertrim" and "Trimit."

The issue is to determine who, either the appellant or his two companies, must be held liable for the sales tax assessed against the three above-mentioned corporate names.

Mr. Roberge testified at the hearing. He described various aspects and certain activities of his two companies. Interveneer Ltée, created in 1978, was primarily involved in the purchase and sale of wood veneers. Intersplice Inc., formed in 1980, was involved in the manufacture of wood or melamine edging and wood veneer sheets. Both companies operated out of the same premises. In 1987, the appellant's accountant recommended that the appellant make, in his own name, a declaration of corporate names with respect to the three names mentioned. The purpose of this registration was to obtain a trade name for the edging products and to distinguish between the sales of wood veneer sheets and those of edging. Relying on the advice of his accountant, the appellant signed the application without asking any questions. The same applies to the application for the manufacturer's sales tax licence made under section 31 of the Act on January 14, 1987, in his own name and with respect to the three corporate names.

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

During his arguments, counsel for the appellant claimed that the accountant had committed an error in fact and in law by suggesting that the appellant make the declaration of corporate names in his own name. The declaration should have been made in the names of the companies, Interveneer Ltée and Intersplice Inc. In support of his claim, counsel maintained that the companies were operated under the same roof, had only one joint bank account and all goods manufactured under the three corporate names were produced for Interveneer Ltée or Intersplice Inc. He also pointed out that the goods, as well as the accounts receivable generated by the manufacture of these goods, were used as collateral for the financing of the operations of Interveneer Ltée and Intersplice Inc. in April 1987. According to counsel for the appellant, these facts show that the three corporate names existed solely for the purposes of the two companies. Consequently, following the bankruptcy of the companies, the respondent should have made a claim with the bankruptcy trustee as a preferred creditor under the terms of section 136 of the *Bankruptcy Act*,² rather than pursue or assess the appellant based on the declaration of corporate names and the application for a manufacturer's sales tax licence. Lastly, counsel for the appellant claimed that the respondent's attitude of relying solely on the documents bearing the appellant's signature was excessively rigid and unfair.

For her part, counsel for the respondent argued that the appellant should be held personally liable for the taxes assessed against the three corporate names. She based her argument on several pieces of evidence. The declaration of corporate names of March 12, 1986, clearly shows that the appellant was doing business on his own behalf under the names and corporate designations of "Supertrim," "Intertrim" and "Trimit." It was also specified in the application for a manufacturer's sales tax licence that the application was made by the appellant, personally, and with respect to the said corporate names. This application for a licence also identified the bank with which the appellant was doing his personal business and not the bank used by Intersplice Inc. and Interveneer Ltée.

Counsel for the respondent further explained that, after the application for a manufacturer's sales tax licence was received, a letter dated March 20, 1987, was sent by Revenue Canada, Customs and Excise, to the appellant personally and with respect to the three corporate names, indicating that the appellant was now subject to federal sales tax under section 50 of the Act. On September 18, 1987, a second letter was sent to the appellant indicating to him that no tax had yet been remitted on taxable sales and that an auditor would be in touch with him shortly. According to the respondent, the appellant should have known from these two letters that he was required to pay the tax. Counsel added that, if the appellant did not wish to be held personally liable, he should have amended the declaration and the application for a licence, something that was never done. Following the letter of September 18, 1987, an auditor visited the appellant's office in February 1988 to conduct an investigation. He found a sales log in the name of Intertrim. The log showed that taxes in the amount of \$17,643.45 were due for the months of January to July 1987, which corresponds to the amount and period for which the appellant was assessed in this instance. Four invoices issued by Intertrim for the sale of goods to clients were also found on the premises.

As for the collateral agreement with respect to the goods and accounts receivable, counsel for the respondent pointed out to the Tribunal that a factoring contract, dated April 7, 1987, was

2. R.S.C., 1985, c. B-3.

signed on behalf of Intertrim. This contract states that the appellant is the sole owner of Intertrim, and it bears the appellant's signature. The contract further stipulates that: "The above agreement will be binding on the undersigned personally." The respondent argued that the appellant cannot claim that the goods belonged to the two companies.

Lastly, counsel for the respondent relied upon the application of article 1835 of the *Civil Code of Lower Canada*, which stipulates that the claims made in the declaration mentioned in article 1834b (i.e., declaration of corporate names) cannot be challenged by any of the signatories.

After reviewing the evidence and considering the arguments put forward in this instance, the Tribunal finds that the appeal must be dismissed.

Section 50 of the Act imposes on the holder of a manufacturer's sales tax licence the obligation to pay tax on the sale price. This obligation is stated in unequivocal terms. The fact that the appellant was poorly advised by his accountant cannot be taken into consideration in determining the appellant's fiscal obligations. Further, the appellant's alleged ignorance of the consequences of his signing of the documents cannot be used as an excuse and as justification for non-payment of the tax.

Even if the Tribunal believes that the appellant acted in good faith, all of the documents submitted in evidence show that he undertook personal liability. The appellant's testimony confirmed that he himself signed both the declaration of corporate names and the application for a manufacturer's sales tax licence. Moreover, the appellant knew or should have known from the letters sent by the respondent, dated March 20, 1987, and September 18, 1987, that he was subject to federal tax.

As for the iniquitous nature of the decision allegedly resulting from the respondent's attitude of relying solely on the documents and signatures, the Tribunal must point out that it is not authorized to introduce concepts of equity or to accept humanitarian considerations in ruling on an appeal.³

For these reasons, the appeal is dismissed.

John C. Coleman
John C. Coleman
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Desmond Hallissey
Desmond Hallissey
Member

3. *Joseph Granger v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, at 77; *Walbern Agri-Systems Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. 3000, December 21, 1989.