



Ottawa, Thursday, February 6, 1992

**Appeal No. AP-90-058**

IN THE MATTER OF an appeal heard on October 25, 1991, 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 13, 1990, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

**BETWEEN**

**BLOWEY-HENRY, A DIVISION OF MOUSSA & SONS ENTERPRISES Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed. The Tribunal finds that the furniture items were purchased by the Social Services Department of the province of Alberta.

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

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

W. Roy Hines  
W. Roy Hines  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-90-058**

**BLOWEY-HENRY, A DIVISION OF MOUSSA  
& SONS ENTERPRISES**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant carries on a furniture wholesale business in the province of Alberta. In connection with its business, it sells furniture on a federal-sales-tax-paid basis as it does not hold a wholesaler's license pursuant to the Excise Tax Act.*

*Between February 16 and March 28, 1989, some furniture was sold, and the issue before the Tribunal is whether the furniture items were sold to the Social Services Department of the province of Alberta or whether they were purchased by the Social Services Department of the province of Alberta on behalf of its clients who are individuals in receipt of social assistance.*

**HELD:** *The appeal is allowed. Having considered the evidence presented by the parties, the Tribunal finds that it is the Social Services Department of the province of Alberta that purchased the furniture and gave it to its clients, most of whom are welfare recipients.*

*Place of Hearing: Calgary, Alberta  
Date of Hearing: October 25, 1991  
Date of Decision: February 6, 1992*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Arthur B. Trudeau, Member  
W. Roy Hines, Member*

*Legal Services for  
the Tribunal: France Deshaies*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Gordon W. Flynn, for the appellant  
Linda J. Wall, for the respondent*

**Appeal No. AP-90-058**

**BLOWEY-HENRY, A DIVISION OF MOUSSA  
& SONS ENTERPRISES**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
ARTHUR B. TRUDEAU, Member  
W. ROY HINES, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act* (the Act)<sup>1</sup> from the Minister of National Revenue's notice of decision, dated March 13, 1990, disallowing a refund of federal sales tax paid by the appellant on furniture purchased from it by the Social Services Department of the province of Alberta (the S.S.D.), who in turn transferred the furniture to welfare recipients.

The appellant carries on a furniture wholesale business in the province of Alberta. In connection with its business, it sells furniture on a federal-sales-tax-paid basis as it does not hold a wholesaler's license pursuant to the Act.

Between February 16 and March 28, 1989, some furniture was sold, and the issue before the Tribunal is whether the furniture items were sold to the S.S.D. or whether they were purchased by the S.S.D. on behalf, or as an agent, of its clients who are individuals in receipt of social assistance.

The charging provision in the Act is contained in section 50. In essence, this section imposes a tax on the sale price of all goods produced or manufactured in Canada or imported into Canada. Therefore, the sale of furniture by the appellant was within the application of section 50.

Under subsection 68.19(1) of the Act, however, a refund may be granted under certain conditions when the sale of goods is to a provincial government. When the conditions outlined in that section are met, a refund of taxes may be granted to the province or to whoever paid or absorbed the tax.

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

Subsection 68.19(1) states:

*68.19 (1) Where tax under Part III, IV or VI has been paid in respect of any goods and Her Majesty in right of a province has purchased or imported the goods for any purpose other than*

*(a) resale,*

*(b) use by any board, commission, railway, public utility, university, manufactory, company or agency owned, controlled or operated by the government of the province or under the authority of the legislature or the lieutenant governor in council of the province, or*

*(c) use by Her Majesty in that right, or by any agents or servants of Her Majesty in that right, in connection with the manufacture or production of goods or use for other commercial or mercantile purposes,*

*an amount equal to the amount of that tax shall, subject to this Part, be paid either to Her Majesty in that right or to the importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer, as the case may require, if Her Majesty or the dealer applies therefor within two years after Her Majesty purchased or imported the goods.*

Thus, for the appellant to succeed on the facts before the Tribunal, it is necessary, among others things, that the goods in question be purchased by the S.S.D.

The appellant claimed that it is the S.S.D. that purchased the furniture and gave it to its clients, most of whom are welfare recipients. Counsel for the appellant argued that it was the S.S.D. that issued all the forms, specified all the terms of the contract and the price the appellant was to charge, conducted all the negotiations and paid for the entire consideration of all the goods it ordered.

The respondent contended that the S.S.D. purchased the furniture on behalf, or as an agent, of its clients who are welfare recipients. Firstly, the respondent argued that this case was not a contract law case. The Tribunal does not share the respondent's position. In order to determine whether the goods in question were purchased by the S.S.D. in conformity with subsection 68.19(1) of the Act, the Tribunal referred to the principles of contract law. The existence of a contract for the sale of the goods in question between the appellant and the S.S.D. could certainly prove that the condition required in section 68.19(1) was met.

The Tribunal considered the S.S.D.'s Invitation to Tender and found that it clearly shows a manifestation of willingness by the S.S.D. to contract, or to be bound, with the appellant with certain legal results. In fact, the Invitation to Tender gave the appellant the opportunity to conclude many binding contracts with the S.S.D.

Secondly, the respondent argued that the S.S.D. was not a party to the contracts ultimately concluded and that the S.S.D. acted only as an agent for the various welfare recipients. The respondent referred to a stipulation in the Purchase Authorization and Invoice forms saying that:

... The client or guardian is the actual purchaser of the goods or services and the client becomes the owner thereof. The Department is only liable for the gross amounts authorized hereunder and is not to be regarded as a party in connection with the purchase of the goods or services authorized hereunder.

In the Tribunal's opinion, that argument fails. The evidence presented by the appellant clearly indicates that it was not the intention of the parties that such a stipulation be enforceable. The above Purchase Authorization and Invoice forms were normally received only after the goods had been ordered, priced and shipped. Furthermore, the Invitation to Tender forms included the following stipulation:

The above are for use of the Government of the province of Alberta, and involve the use of crown funds, and are not for resale and as such are exempt from sales and excise taxes unless otherwise stated herein.

The evidence also showed that this statement was sometimes reinforced by an additional stipulation within the terms of the agreement in the Invitation to Tender, such as:

We certify that these goods and services are being purchased with crown funds, by the government of the province of Alberta ...

or in more recent Purchase Authorization and Invoice forms, such as:

This is to certify that the property and/or services ordered/purchased hereby are being purchased by Family and Social Services which is part of the Alberta Crown or is listed as a tax-free Government service....

This evidence reinforces the fact that at no point in time did the appellant contract, or have the intention to contract, with welfare recipients. The Tribunal accepts the facts that the appellant is a wholesaler that sells exclusively to dealers or the government and never to individuals. For that reason, it sells the furniture at a lower price than the retail price. The appellant's sales are credit sales, and the appellant testified that it would not make credit sales to welfare recipients.

Finally, the Tribunal does not believe that the S.S.D. acted as an agent for the welfare recipients. The S.S.D. decides and negotiates all the conditions as to pricing, supply, delivery, quality, quantity and bid in its Invitation to Tender. The welfare recipients have no say in those matters. The S.S.D. handles all the complaints as to faulty goods. Finally and most importantly, the Tribunal found that the S.S.D. paid for the entire consideration of all the goods it ordered. Invoking the principles of agency would only amount to an evasion of the privity rule of contract.

Having considered all the evidence and the arguments, the Tribunal finds that the transactions between the appellant and the S.S.D. fall within the scope of subsection 68.19(1) of the Act and, therefore, finds that it is the provincial Crown that purchased the goods in question.

The appeal is allowed.

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

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

W. Roy Hines  
W. Roy Hines  
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