



Ottawa, Tuesday, November 3, 1992

Appeal No. AP-90-078

IN THE MATTER OF an appeal heard on July 14, 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 June 29, 1990, with respect to
notices of objection served under section 81.15 of the
Excise Tax Act.

BETWEEN

**RIEGER ENTERPRISES INC., STELLARIS CRAFT &
FLORIST SUPPLIES DIVISION AND VISTA SCENIC
HOBBY PRODUCTS DIVISION**

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-078

**RIEGER ENTERPRISES INC., STELLARIS CRAFT &
FLORIST SUPPLIES DIVISION AND VISTA SCENIC
HOBBY PRODUCTS DIVISION**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the appellant is entitled to an annual exemption from sales tax on the first \$50,000 of taxable sales in each calendar year under the Small Manufacturers or Producers Exemption Regulations.

HELD: *The appeal is dismissed.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: July 14, 1992
Date of Decision: November 3, 1992

Tribunal Members: Charles A. Gracey, Presiding Member
Sidney A. Fraleigh, Member
Desmond Hallissey, Member

Counsel for the Tribunal: Brenda C. Swick-Martin

Clerk of the Tribunal: Dyna Côté

Appearances: John Rieger, for the appellant
Wayne D. Garnons-Williams, for the respondent

Appeal No. AP-90-078

**RIEGER ENTERPRISES INC., STELLARIS CRAFT &
FLORIST SUPPLIES DIVISION AND VISTA SCENIC
HOBBY PRODUCTS DIVISION**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
SIDNEY A. FRALEIGH, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from two notices of decision of the respondent dismissing the appellant's objection to Assessment Nos. SW0 7573 and SW0 20010290.

The appellant is a manufacturer of hobby products, crafts and florist supplies. The company is comprised of two divisions: Stellaris Craft & Florist Supplies (Stellaris) and Vista Scenic Hobby Products (Vista).

In early 1987, the appellant contacted representatives of the Department of National Revenue (Revenue Canada) to enquire about a sales tax licence because a wholesaler had requested its licence number. Revenue Canada representatives advised that a licence would be required if sales in a calendar year exceeded \$50,000 and sent a questionnaire and application form to the appellant. About two months after receiving the information, the appellant was contacted by Revenue Canada to find out why the application had not been submitted. The appellant responded that it was waiting until its year end of April 30. The appellant subsequently submitted the application form, and a sales tax licence was granted effective June 1, 1987, under Sales Tax Licence No. S3189461.

On November 28, 1988, the appellant applied for a refund of sales tax paid from January 1 to October 31, 1988, claiming that its net taxable sales of \$36,041.60 qualified it as a small manufacturer and that it was not, therefore, obliged to remit sales tax. Vista was assessed for tax on February 10, 1989, covering the period from November 2, 1987, to December 31, 1988. On April 2, 1990, Stellaris was assessed for tax for February 1990. The appellant objected to both assessments, which were subsequently confirmed by the respondent.

The issue in this appeal is whether the appellant is entitled to an annual exemption from sales tax on the first \$50,000 of taxable sales in each calendar year. The relevant provisions of the Act read as follows:

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

50. (1) *There shall be imposed, levied and collected a consumption or sales tax ... on the sale price or on the volume sold of all goods*

- (a) *produced or manufactured in Canada*
- (i) *payable ... by the producer or manufacturer*

...

54. (1) *Subject to this section, every manufacturer or producer shall apply for a licence for the purposes of this Part.*

(2) *The Minister may grant a licence to any person applying therefor under subsection (1), but ... may make regulations exempting any class of small manufacturer or producer from payment of consumption or sales tax on goods manufactured or produced by persons who are members of the class and persons so exempted are not required to apply for a licence.*

The relevant sections of the *Small Manufacturers or Producers Exemption Regulations*² (the Regulations) are as follows:

2. (1) *The following classes of small manufacturers and producers are exempt from payment of consumption or sales tax on goods manufactured or produced by them in the operations referred to in this section:*

(a) *manufacturers, other than those who elect to operate under a licence, who sell goods of their own manufacture that are otherwise subject to consumption or sales tax or who manufacture goods for their own use that are otherwise subject to consumption or sales tax, if the value of such goods sold or manufactured for their own use does not exceed \$50,000 per calendar year;*

...

(2) *When the value of the sales of a manufacturer or producer who is exempt from obtaining a licence under paragraph (1)(a) exceeds \$50,000 during any calendar year, the exemption granted by subsection (1) ceases to apply.*

Mr. John Rieger, appearing on behalf of the appellant, argued that the Regulations provide for an annual exemption from sales tax on the first \$50,000 of taxable sales in each calendar year. It was also argued that export sales are not taxable goods within the meaning of the Regulations and, therefore, should not be included in computing the \$50,000 threshold. Revenue Canada was also alleged to have misled and withheld information from the appellant, causing it to apply for a sales tax licence prematurely.

Mr. M.J. Michael, Senior Excise Auditor for the Barrie District Excise Office, was called as a witness for the respondent. He testified that the appellant was required to become a licensed

2. SOR/82-498, Canada Gazette Part II, Vol. 116, No. 10, at 1869.

manufacturer because its sales of goods manufactured during the 1986 calendar year exceeded \$50,000, and sales for the 1987 calendar year had been forecast to be between \$100,000 and \$150,000.

He further testified that a licensee would have to be licensed for a full calendar year and would have to contact the District Excise Office if it sought to have its licence cancelled. Mr. Michael testified that, to his knowledge, the appellant had not made such a request.

Counsel for the respondent argued that, as a holder of a sales tax licence, the appellant is liable under subsection 50(1) of the Act for sales tax because (a) the appellant is not entitled to an annual exemption from sales tax on the first \$50,000 of taxable sales in each calendar year, and (b) the appellant does not meet the conditions set out in the Regulations for exemption from the payment of sales tax as a small manufacturer.

In the Tribunal's view, it is important to review the relevant provisions of the Act and the Regulations. Subsection 50(1) of the Act imposes sales tax requirements on manufacturers or producers of goods in Canada. Every manufacturer or producer is, in turn, required to be licensed under subsection 54(1) of the Act. However, pursuant to subsection 54(2), regulations may be made exempting any class of small manufacturer or producer from the payment of tax and the requirement to apply for a licence. The Regulations exempt manufacturers that sell goods of their own manufacture or that manufacture goods for their own use if the value of such goods does not exceed \$50,000 per calendar year. Subsection 2(2) of the Regulations explicitly provides that when the value of the sales of an exempt manufacturer or producer exceeds \$50,000 during any calendar year, the exemption ceases to apply.

In the Tribunal's view, a plain reading of the legislation makes the exemption from tax conditional upon the sales value of taxable goods manufactured or produced not exceeding \$50,000 in each calendar year. The legislation also provides that if the \$50,000 of sales of taxable goods manufactured or produced is exceeded, the exemption immediately ceases to apply. To interpret these provisions as the appellant suggests would mean that, although the exemption ceased to apply under subsection 2(2) of the Regulations by virtue of a manufacturer's sales exceeding \$50,000 during any calendar year, the manufacturer would, nevertheless, be entitled to the exemption the following year. Such an outcome could not have been the intention of Parliament.

This interpretation of the legislation is supported by Excise Memorandum ET 104 (the Memorandum) dated September 15, 1989, upon which the appellant has relied extensively. Paragraph 1(a) on page 2 of the Memorandum states that small manufacturers are not required to be licensed if they are "persons who sell taxable goods of their own manufacture, or who manufacture taxable goods for their own use if the value of these taxable goods does not exceed \$50,000 in a calendar year." Thereafter on the same page, paragraph 4 under the heading "Manufacturers Required To Be Licensed" explicitly states that manufacturers that are unlicensed and that have qualified as small manufacturers "are required to be licensed when the sales value of these taxable goods exceeds \$50,000 during any calendar year." Paragraph 4 goes on to provide that such manufacturers "must apply for a manufacturer's sales tax licence," and "account for tax on their taxable sales ... commencing the day the annual sales value exceeds \$50,000." This latter

part of paragraph 4 also corrects the misapprehension of the appellant that sales tax falls retroactively upon the first \$50,000 of sales after the \$50,000 threshold is crossed. The Tribunal is pleased to correct the appellant's misconception of this matter, as were counsel for the respondent during the hearing and the Minister of National Revenue (the Minister) in a letter dated March 30, 1989, addressed to Mrs. Edna Anderson, M.P.

For the purposes of clarity, the Tribunal also wishes to point out that once a manufacturer becomes licensed in a year, the licence remains in force in subsequent years until cancelled by the Minister under the Act. The appellant errs in asserting that one reverts to a non-licensed state until sales again exceed \$50,000 in a subsequent year. Not only is this clear from the legislation and the Memorandum, but the reason for it is also equally apparent inasmuch as a licensed manufacturer is thereby permitted to purchase taxable inputs on a tax-exempt basis. The *quid pro quo* is that tax remains payable on the sale price of the goods. The Tribunal assumes that the appellant, upon becoming a licensed manufacturer, purchased previously taxable inputs on a tax-exempt basis.

The Tribunal also finds that the appellant's assertion, that is, that the value of goods sold for export are to be excluded in the calculation of the \$50,000 threshold for the purposes of the Regulations, is inconsistent with a plain reading of the legislation. Subsection 2(1) of the Regulations explicitly provides that "manufacturers ... who sell goods of their own manufacture ... or who manufacture goods for their own use" (emphasis added) are exempt from the payment of tax "if the value of such goods sold or manufactured for their own use does not exceed \$50,000." Goods manufactured and sold for export are goods manufactured for sale, and thus their value is to be included in the calculation of the \$50,000 threshold.

In response to the appellant's allegation that he was misled or misinformed as to sales tax liability by representatives of Revenue Canada and, thereby, led to apply earlier than necessary for a licence, the appellant ignores the information that it provided in the Manufacturer's Licence Application Questionnaire on May 25, 1987, that its sales in the previous calendar year exceeded \$50,000. Even if the appellant was in fact misled by such representatives, the proof of which is not clear from the evidence, the Tribunal is bound to apply the law regardless of advice given by representatives of Revenue Canada.

For the foregoing reasons, the Tribunal finds that the appellant is not entitled to an annual exemption from sales tax on the first \$50,000 of taxable sales in each calendar year.

The Tribunal also finds that the appellant does not meet the conditions set out in the Regulations for exemption from the payment of sales tax as a small manufacturer. In order to qualify as a small manufacturer under the Regulations, a manufacturer must satisfy the following three conditions: (a) it must not elect to operate under a licence; (b) it must sell taxable goods of its own manufacture; and (c) the value of the goods sold or manufactured for its own use must not exceed \$50,000 in a calendar year. The appellant did not meet the first condition, as it was a sales tax licence holder as of June 1, 1987, and did not meet the third condition because the value of goods manufactured by it exceeded \$50,000 in each calendar year since and including 1987.³ As

3. "Sales Based on Calendar Year," Exhibit AP-90-078-12 of the Canadian International Trade Tribunal, at 39.

the appellant did not qualify as a small manufacturer for sales tax purposes, it is not entitled to a refund of the tax that it was obliged to pay as a licensed manufacturer under the Act.

For the foregoing reasons, the appeal is dismissed.

Charles A. Gracey _____
Charles A. Gracey
Presiding Member

Sidney A. Fraleigh _____
Sidney A. Fraleigh
Member

Desmond Hallissey _____
Desmond Hallissey
Member