



Ottawa, Monday, January 18, 1993

Appeal No. AP-90-183

IN THE MATTER OF an appeal heard on November 5, 1992, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated October 31, 1990, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

F.D. JUL INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-183

F.D. JUL INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant purchases, for the purpose of resale, numbers and letters printed on plasticized stickers of various colours, as well as file folders. In the course of the appellant's operations, the file folders must sometimes be removed from their boxes and the plasticized numbers and letters affixed to them according to its clients' instructions. The appellant requested a refund of the federal sales tax paid to the respondent based on its sale price to clients claiming that it should have paid the tax on the cost of the goods, that is, the file folders and the plasticized numbers and letters. The question at issue is whether the application of the numbers and letters printed on plasticized stickers to the tabs of the file folders constitutes manufacturing or production within the meaning of subsection 50(1) of the Excise Tax Act, in which case the appellant is liable for the tax calculated on its sale price.

HELD: *The appeal is allowed. The Tribunal finds that the application of the plasticized stickers does not confer any new function on the file folders in issue because they are used for filing in any case. The Tribunal is of the opinion that a file folder, even without the application of the said stickers, is by definition a file folder. Moreover, the appellant's clients can buy blank file folders from the appellant and write on them or affix numbers or letters themselves. When the appellant performs this task for its clients, it is not manufacturing or producing within the meaning of the Excise Tax Act, but is performing a task of a service nature without giving new forms, qualities or properties to the file folders.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 5, 1992
Date of Decision: January 18, 1993

Tribunal Members: Desmond Hallissey, Presiding Member
Kathleen E. Macmillan, Member
Arthur B. Trudeau, Member

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Dyna Côté

Appearances: Claude P. Desaulniers, for the appellant
Alain Lafontaine, for the respondent

Appeal No. AP-90-183

F.D. JUL INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
KATHLEEN E. MACMILLAN, Member
ARTHUR B. TRUDEAU, Member

REASONS FOR DECISION

This appeal was filed under section 81.19 of the *Excise Tax Act*¹ (the Act) following a decision of the Minister of National Revenue (the Minister) confirming in part a notice of determination, which partially rejected a request for refund submitted by the appellant.

The facts in this case are relatively simple. The appellant purchases, for the purpose of resale, numbers and letters printed on plasticized stickers of various colours, as well as file folders. In the course of the appellant's operations, the file folders must sometimes be removed from their boxes and the plasticized numbers and letters affixed to them according to its clients' instructions. The appellant was exempt from paying sales tax on the purchase of the above-mentioned goods. However, it paid federal sales tax to the respondent on the sale price charged to its clients. The appellant requested a refund of the federal sales tax on the grounds that it should have paid the tax on the cost of the goods, that is, the file folders and the plasticized numbers and letters. The appellant is basically claiming that it should not be considered the manufacturer of the file folders to which it affixed the plasticized numbers and letters. The notice of determination of the Deputy Minister of National Revenue for Customs and Excise, dated February 13, 1990, allowed a sales tax refund only on the goods resold as originally purchased. The appellant objected to this determination and, on October 31, 1990, the Minister allowed its application in part, the appellant having shown that other goods had also been resold as originally purchased.

The Tribunal must therefore determine whether the application of the numbers and letters printed on plasticized stickers to the tabs of the file folders constitutes manufacturing or production within the meaning of subsection 50(1) of the Act, in which case the appellant is liable for the tax calculated on its sale price.

During the hearing, counsel for the appellant called a witness, Mrs. Josette Cooper, comptroller at F.D. Jul Inc. Mrs. Cooper explained, in particular, that the prices of the file folders to which plasticized stickers have been affixed vary depending on the number of codes, that is, numbers or letters, requested by the clients. Mrs. Cooper indicated that, in general, the appellant

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

receives an order by telephone or by telecopier from a client for a certain number of file folders and that, at that time, the client specifies the number and the characteristics of the codes required. The witness also revealed that the file folders prepared in this way for the requirements of a given client cannot be sold to anyone except that client.

Counsel for the appellant argued that the application of the plasticized stickers in issue to the file folders does not constitute a manufacturing or production operation within the meaning of *The Queen v. York Marble, Tile and Terrazzo Limited*,² because it did not give the file folders any new forms, qualities or properties. Moreover, counsel for the appellant argued that the words "new forms, qualities [or] properties," used first by the Superior Court of Quebec in *Minister of National Revenue v. Dominion Shuttle Company Limited*,³ and then by the Supreme Court of Canada in *York Marble*, had since then been defined by the courts. In his opinion, these words were interpreted as meaning that non-useable or non-saleable goods had to be sufficiently transformed to make them useable or saleable. In support of his arguments, counsel cited *Gruen Watch Company of Canada Limited v. Attorney-General of Canada*,⁴ *George W. Crothers Limited v. The Minister of National Revenue*,⁵ *Quebec Hydro-Electric Commission v. The Deputy Minister of National Revenue for Customs and Excise*,⁶ *The Queen v. E J Piggott Enterprises Limited*,⁷ *The Queen v. Stuart House Canada Limited*,⁸ as well as the dissenting opinion of Spence J. in *Consumers' Gas Company v. The Deputy Minister of National Revenue for Customs and Excise*.⁹ Counsel for the appellant also relied on the decision of the Federal Court in *Fiat Auto Canada Limited v. The Queen*,¹⁰ in which it was found that the installation of radios in cars did not constitute a manufacturing or production activity since the cars per se did not receive any new forms, qualities or properties.

Counsel for the respondent, for his part, argued that the file folders cannot be used as file folders until the plasticized numbers and letters are affixed. He claimed that this activity gives them an essential property that they would not otherwise have, a fact that he claimed the witness for the appellant has revealed. In addition, a substantial added value is given to the file folders by the application of the plasticized stickers. Counsel finally relied on *Minister of National Revenue v. Enseignes Imperial Signs Ltée*,¹¹ in which the Federal Court of Appeal ruled, firstly, that production has occurred "if what a person does has the result of producing something new" and, secondly, that "a thing is new when it can perform a function that could not be performed by the things which existed previously."

First, the Tribunal does not believe that jurisprudence tends to claim that the now famous words in *Dominion Shuttle* were limited in such a way that a producer or manufacturer under the

2. [1968] S.C.R. 140.

3. (1933), 72 Que. S.C. 15.

4. [1950] C.T.C. 440.

5. [1969] C.T.C. 546.

6. [1970] S.C.R. 30.

7. [1973] C.T.C. 65.

8. [1976] C.T.C. 37.

9. [1976] 2 S.C.R. 640.

10. 83 D.T.C. 5451.

11. Federal Court of Appeal, Appeal No. A-264-8, February 28, 1990.

Act is no more than the person who makes goods saleable which were not previously saleable. There are, in fact, innumerable situations in which a producer will produce or manufacture goods, within the meaning of the Act, from one or more goods which were previously saleable. The fact that goods become saleable following an operation by a third party is a matter of recognizing the transformation undergone which could have influenced the decision of certain courts, given the nature of the goods in issue in each case. However, it cannot be stated, as a general rule, that goods acquire new forms, qualities or properties only when they become saleable.

The Tribunal is of the opinion that it is in this manner that the decision of the Federal Court of Appeal must be interpreted in *Imperial Signs*. After referring to the decision in *York Marble*, the Court decided in that case to focus on the newness of the thing produced or manufactured. It then determined that this newness takes on value in relation to the new functions that the goods could perform. Consequently, the illuminated signs produced from used signs would themselves acquire new functions once they had been repaired and repainted, and a new advertising message had been written on the plastic cover.

In the case before it, the Tribunal is of the opinion that the application of the plasticized stickers does not confer any new function on the file folders in issue. These folders are used for filing in any case, and the Tribunal is convinced that a file folder, even without the application of the said stickers, is by definition still a file folder. Moreover, the appellant's clients can buy blank file folders from the appellant and write the numbers and letters on them or buy the plasticized stickers also sold by the appellant. The Tribunal therefore finds that, when the appellant performs this task for its clients, it is not manufacturing or producing within the meaning of the Act, but is performing a task of a service nature without giving new forms, qualities or properties to the file folders. The fact that these file folders are sold at a price higher than that for blank file folders has no bearing on this case and merely indicates that the file folders are sold at a price that includes the cost of the work. Therefore, the appellant is not, within the meaning of subsection 50(1) of the Act, the manufacturer or producer of the file folders to which it affixed the plasticized stickers.

For these reasons, the Tribunal allows the appeal.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Arthur B. Trudeau
Arthur B. Trudeau
Member