



Ottawa, Wednesday, November 20, 1991

Appeal No. AP-90-215

IN THE MATTER OF an appeal heard on September 18, 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 December 14, 1990, with respect to a notice of objection served on May 31, 1989, under section 81.15 of the *Excise Tax Act*.

BETWEEN

MEUBLES M.S. ENR.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal finds that the appellant did not meet the requirements for documentary evidence stipulated under the Erection or Installation Costs Regulations.

John C. Coleman
John C. Coleman
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Charles A. Gracey
Charles A. Gracey
Member

Robert J. Martin
Robert J. Martin
Secretary



Ottawa, Wednesday, November 20, 1991

Appeal No. AP-90-216

IN THE MATTER OF an appeal heard on September 18, 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 December 20, 1990, with respect to a notice of objection served on May 31, 1989, under section 81.15 of the *Excise Tax Act*.

BETWEEN

LES CUISINES M.S. INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal finds that the appellant did not meet the requirements for documentary evidence stipulated under the Erection or Installation Costs Regulations.

John C. Coleman
John C. Coleman
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Charles A. Gracey
Charles A. Gracey
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-215

MEUBLES M.S. ENR.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Appeal No. AP-90-216

LES CUISINES M.S. INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Both appeals were commenced under section 81.19 of the Excise Tax Act.¹ The Tribunal has to determine if the taxpayer is entitled to a deduction of more than 10 percent for installation costs on kitchen cabinets.

HELD: *The appeals are dismissed. Since the taxpayer failed to provide supporting records showing the actual costs of installation, which are required under the Erection or Installation Costs Regulations² adopted under section 46 of the Excise Tax Act, the Tribunal upholds the decisions of the Minister of National Revenue which allowed only the maximum authorized deduction of 10 percent.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 18, 1991
Date of Decision: November 20, 1991

Tribunal Members: John C. Coleman, Presiding Member
Michèle Blouin, Member
Charles A. Gracey, Member

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Nicole Pelletier

Appearances: René Maillette, for the appellant
Dominique Gagné, for the respondent

1. R.S.C., 1985, c. E-15.
2. SOR/83-136, Canada Gazette, Part II, 23/2/83, p. 625.

Appeal No. AP-90-215

MEUBLES M.S. ENR.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Appeal No. AP-90-216

LES CUISINES M.S. INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
MICHÈLE BLOUIN, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

These two appeals were commenced pursuant to section 81.19 of the *Excise Tax Act*³ (the Act).

Les Cuisines M.S. Inc., a company incorporated in July 1987, continued the manufacturing activities carried out up to that time by Meubles M.S. Enr. with respect to the manufacture of custom kitchen cabinets, bedroom furniture and other home furniture. The appeal of Meubles M.S. Enr. was commenced with respect to a notice of assessment covering the period from May 1, 1985, to July 31, 1987, which, in addition to a fine and interest, requested payment of \$5,900.27, consisting of \$2,390.29 for "non-applicable deductions" and \$3,509.98 for "non-taxed sales." A notice of objection was subsequently served to the Department of National Revenue (the Department). The notice of assessment was confirmed by the Department in a notice of decision dated December 14, 1990. The appeal of Les Cuisines M.S. Inc. relates to a notice of assessment dated April 12, 1989, covering the period from August 1, 1987, to December 31, 1988, and which, in addition to a fine and interest, requested payment of \$3,882.02, consisting of \$2,718.41 for "non-applicable deductions" and \$1,163.61 for "non-taxed sales." A notice of objection was served on May 31, 1989, by Les Cuisines M.S. Inc. In a notice of decision dated December 20, 1990, the Department confirmed the notice of assessment.

The two appeals raise the same issue. Given the identicalness of the issue to be decided and the fact that only one hearing was held, the Tribunal will provide only one series of reasons in support of the two decisions rendered.

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

The issue in dispute is whether the taxpayer, in both instances, is entitled to a deduction of greater than 10-percent for installation costs on kitchen cabinets. The appellants deducted from the sale price of the cabinets a percentage ranging from 35 percent to 60 percent, deductions that were refused by the Department, which allowed them only a 10-percent deduction on the ground that an examination of the supporting records provided by Les Cuisines M.S. Inc. and, previously, by Meubles M.S. Enr. did not show actual installation costs in excess of 10 percent. In other words, and as stated in the notices of decision, the Department could not allow a deduction greater than the 10 percent authorized for installation costs without supporting records.

The legislation relevant to the issue is paragraph 50(1)(a) and section 46 of the Act. The Tribunal feels that a summary of these provisions would be very helpful for the reader. The first provision stipulates that the sales tax is charged on the sale price, while the second provision provides for the exclusion from the sale price of goods manufactured in Canada, the cost of installation of the goods assumed by the manufacturer when the sale price of the goods includes installation, and further stipulates that the Governor in Council can prescribe, by regulation, the manner in which these exclusions are calculated. The Erection or Installation Costs Regulations⁴ (the Regulations), which is an important document in the settlement of this dispute, was adopted under this provision. The Tribunal wishes to add that Excise Memorandum ET 205 explains the application of these regulations.

At the hearing, the witness, being the wife of the company owner, submitted order forms which showed that the prices to clients included installation costs which were sometimes approximately 40 percent of the total amounts specified on these forms. However, the witness was unable to provide supporting records to show the actual cost of installation of the cabinets such as, for example, wages, insurance premiums, rental costs for equipment, etc. (section 5 of the Regulations gives a list of these costs). The witness explained that her husband usually worked alone and did not pay himself a salary, and that there was no accounting system that would have made it possible to identify the actual installation costs. However, the witness testified that she was certain that such costs greatly exceeded 10 percent since her husband often spent half his time installing the cabinets which he had previously made in his workshop.

The Tribunal acknowledges, as did the witness for the Department, that it is very likely that the installation costs incurred by the cabinet maker were not minimal. Unfortunately, the Tribunal finds that the documents provided do not show the actual costs incurred in each transaction during the periods covered by the notices of assessment. Given the lack of supporting records required under section 8 of the above-mentioned Regulations, the Tribunal has no choice but to uphold the decisions of the Minister of National Revenue, which, in accordance with section 6 of the Regulations, allowed only the 10-percent authorized deduction for installation costs and refused the additional deductions claimed.

4. SOR/83-136, Canada Gazette, Part II, 23/2/83, p. 625.

The appeals are dismissed.

John C. Coleman
John C. Coleman
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Charles A. Gracey
Charles A. Gracey
Member