



Ottawa, Wednesday, February 24, 1993

Appeal No. AP-90-239

IN THE MATTER OF an appeal heard on November 10, 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 January 25, 1991, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

LES PLASTIQUES M.C. LTÉE

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Michèle Blouin
Michèle Blouin
Presiding Member

John C. Coleman
John C. Coleman
Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-239

LES PLASTIQUES M.C. LTÉE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The question at issue in this appeal is whether certain whirlpool baths manufactured by the appellant constitute "bathtubs" within the meaning of section 20 of Part I of Schedule IV to the Excise Tax Act.

HELD: *The appeal is allowed.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 10, 1992
Date of Decision: February 24, 1993

Tribunal Members: Michèle Blouin, Presiding Member
John C. Coleman, Member
Kathleen E. Macmillan, Member

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Dyna Côté

Appearances: Michael Kaylor, for the appellant
Alain Lafontaine, for the respondent

Appeal No. AP-90-239

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Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
JOHN C. COLEMAN, Member
KATHLEEN E. MACMILLAN, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) following a decision of the Minister of National Revenue (the Minister).

The appellant, Les Plastiques M.C. Ltée, is a manufacturer of showers and bathtubs. On April 26, 1989, it was assessed \$143,658.57, including taxes, interest and penalties, on sales made between March 1, 1985, and November 30, 1988. The appellant served a notice of objection to this assessment, which was subsequently confirmed by the Minister on January 25, 1991.

The question at issue in this appeal is whether certain whirlpool baths manufactured by the appellant constitute "bathtubs" within the meaning of section 20 of Part I of Schedule IV to the Act, in which case tax is collected at a reduced rate. The bathtubs in issue are the larger models, e.g. Alcove MC 3000, 3500, 4000 and 5000. The smaller models identified with three numbers, such as MC 200, 300, 600 and 700, are deemed by the respondent to be bathtubs within the meaning of the above-mentioned section.

The first witness for the appellant was Mr. Michel Lippé, owner and President of Les Plastiques M.C. Ltée. Mr. Lippé began with a description of the similarities and differences between models MC 200 and 4000. According to this witness, both models are constructed of the same raw materials and the same components, such as the water supply source, the pump, the drain, the overflow, the controls for the air jets, the fittings and the timer. Only the filter and heater are specific to Model MC 4000. In response to a question from counsel for the appellant concerning the use made of these two models, Mr. Lippé stated that the bathtubs, regardless of their size, were used for relaxation purposes by clients.

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

Mr. Lippé then described the steps involved in installing the bathtubs that are sold. He mentioned the connection of the bathtubs to the building sewer as well as to the fuse box in the home. He added that the installation is completed by what can be generally described as the "access," which consists of a podium or steps. This access is built by carpenters and covered with ceramic tile. According to the witness, a bathtub installed in this manner remains in place and becomes part of the home. Mr. Lippé stated that 95 percent of the bathtubs are installed inside the home, either in the basement, the bedroom or a bathroom. As for the term "spa" (hot tub), the witness mentioned the recent link made in advertising between a "spa" and a large bathtub.

In response to a question from counsel for the respondent that the goods in issue and the smaller models of bathtubs are different because the bathtubs in issue can accommodate more than one person, Mr. Lippé stated that, based on his experience, the model MC 200 bath can accommodate two people and that it is often purchased for that reason. He also testified that he had never advised against the use of soaps in whirlpool baths, regardless of the size. In his opinion, the use of soap does not interfere with the operation nor with the durability of the whirlpool baths. However, Mr. Lippé did point out that people will shower before entering the bathtub in order to avoid the ring left by soap in the larger models. He then explained that there are products which neutralize the soap in the water. The witness responded in the negative to the suggestion that the whirlpool baths in issue are not used for sanitary purposes. According to Mr. Lippé, it is the water and not the soap that does the cleaning, and the soap simply provides a better cleansing or treats the skins. In response to a question from the Tribunal, Mr. Lippé explained that models MC 600 and 700 are designed to accommodate more than one person at a time.

Mr. Mario Allaire was the second witness for the appellant. The Centre de plomberie Saint-Jérôme (the Centre), where the witness works as the sales manager, distributes and installs bathtubs and other products. It apparently has one of the largest display rooms in Quebec with 25 decorated bathrooms. According to Mr. Allaire, the large models do constitute bathtubs. He reiterated the fact that the various bathtubs can be installed in various locations in the house and that the installation of some models includes the addition of a podium and ceramic tiles. He responded affirmatively to the question about whether the models in issue, once installed, remain in place for long periods. He also stated that, based on the sales at the Centre, 97 percent of the models are installed inside and that their location depends on the floor plan of the dwelling.

Mrs. Nicole Vekemans-Leurquin, an interior designer and teacher of design and art history, was the appellant's last witness. Referring to certain chapters in the work The Bed and Bath Book,² which were submitted in evidence at the hearing, Mrs. Vekemans-Leurquin gave a brief overview of the history and evolution of the bathtub, from the time of the Ancient Greeks to the 20th century. She emphasized the social element of bathtubs for the Greeks and Romans. She also mentioned that, according to the author, there has been an extraordinary evolution in the bathtub in the last twenty years. The reasons given for this phenomenon are that our modern, active life has apparently turned the bathtub into a place of relaxation and its location is no longer confined to the bathroom. The witness commented on certain extracts from specialized periodicals, mentioning among other aspects the need for relaxation which the bathtub fulfils. She also indicated that the

2. Terence Conran, New York: Crown Publishers at 193.

goods in issue are very similar to the products described in Exhibit A-13 (extract from the French-language magazine *Bains Cuisines Confort*³) which are designated as bathtubs.

During his argument, counsel for the appellant claimed that the word "bathtub" in section 20 of Part I of Schedule IV to the Act must be interpreted according to its usual meaning. In his opinion, the definitions given in certain dictionaries are very broad; there is no restriction pertaining to the requirement to wash or to use soap in a bathtub. Indeed, the bathtub can be used for a number of purposes, depending on the wishes of the user. He went on to say that what needs to be retained from these definitions is essentially the fact that the body is immersed in a liquid, generally water, and that this can be done for reasons other than the need to wash the body. Moreover, the definitions do not impose any restrictions as to the accessories that can be used with a bathtub, nor a limit on the number of persons that can be in a bathtub. Furthermore, these definitions do not require that the bathtub be located in the bathroom.

Counsel for the appellant also argued that the section in question, unlike other sections of Part I of Schedule IV to the Act, does not contain any requirement regarding the permanent installation of bathtubs. Nevertheless, should the Tribunal decide otherwise, the evidence given during the hearing that the goods in issue are intended to be permanently installed was not contradicted. According to counsel for the appellant, the evidence clearly shows that the goods in issue qualify as construction materials within the meaning of the heading of Part I of Schedule IV to the Act, whether they are installed during the original construction or as part of renovations.

Lastly, counsel for the appellant spoke of the usual meaning of the word "wash." He mentioned the definition in *Webster's New World Dictionary*⁴ according to which "wash" does not necessarily involve the use of soap.

Counsel for the respondent did not contest the argument that the word "bathtub" should be given its ordinary meaning. He did, however, argue that the dictionary definitions always contain a restriction that excludes the goods in issue. For example, the definition given in the *Random House Webster's College Dictionary*⁵ states that the bathtub constitutes "a permanent fixture in the bathroom." In his opinion, the common meaning of the word "bathtub" does not bring to mind the goods in issue. *Le Petit Robert*⁶ explains that "*une personne peut se baigner*" ([translation] a person can bathe) in a bathtub; the goods in issue, however, are used by several people because their purpose is one of leisure.

According to counsel for the respondent, who cited the administrative policy on whirlpool baths⁷ of the Department of National Revenue for Customs and Excise, the criteria used to determine when a container ceases to be a bathtub is that of draining. To be deemed a bathtub, the container must be drained each time it is used. If the container is large enough to accommodate

3. September to December 1992 at 9.

4. David B. Guralnik, Second College Edition, Toronto: Nelson, Foster & Scott at 1603.

5. New York: Random House, 1991 at 116.

6. Montréal: Les dictionnaires ROBERT-CANADA S.C.C., 1991 at 152.

7. Memorandum ET/PS 289, Department of National Revenue for Customs and Excise, March 19, 1985.

several people and the water can be retained for an extended period of time, then the product in issue is not a bathtub.

Lastly, counsel for the respondent claimed that the goods in issue do not constitute "construction materials" and that the legislator did not intend to include these goods in its description of a bathtub. Unlike the primary function of the goods in issue which is that of relaxation, the primary function of a bathtub is sanitary and that is why bathtubs qualify for the exemption provided by the legislator.

After considering the evidence and reviewing the arguments, the Tribunal is of the opinion that the appeal must be allowed. Firstly, in keeping with counsel for the parties, the Tribunal believes that the word "bathtub" mentioned in section 20 of Part I of Schedule IV to the Act must be given its usual meaning. The broad nature of the dictionary definitions should be noted. For example, according to *Le Petit Robert*,⁸ a "baignoire" (bathtub) is a "*cuve plus ou moins allongée où une personne peut se baigner*" ([translation] a tub of some length in which a person can bathe). On the other hand, the *Dictionnaire de la langue française Lexis*⁹ defines a "baignoire" (bathtub) as an "*appareil sanitaire dans lequel on prend des bains*" ([translation] a sanitary device in which a person bathes); the word "bain" (bathe) is defined as "*action de plonger un corps (surtout le corps humain) dans un liquide, complètement or partiellement*" ([translation] the act of submerging a body (usually the human body), wholly or partially, in a liquid). Lastly, the *Littré*,¹⁰ defines the word "baignoire" (bathtub) as "*vaisseau pour prendre des bains*" ([translation] a vessel for taking baths).

The Tribunal finds that these definitions do not contain any significant restriction which would exclude the goods manufactured by the appellant from the definition of the word "baignoire" (bathtub). The definitions do not place any obligatory limit on the number of persons that can simultaneously occupy a bathtub. This fact appears to be accepted by the respondent since it considers that models MC 600 and MC 700, for example, are entitled to the exemption in question; however, these models can clearly accommodate more than one person at a time. In addition, there is nothing in these definitions that requires the use of cleaning agents. The fact that a person merely immerses himself in a bathtub should not preclude the cleaning process; the evidence has shown that the filter is designed to collect dead skin as well as hair.

The Tribunal also finds that the fact that the bathtub is not drained after each use does not change its nature as a "bathtub." It is of the opinion that the retention of the water is evidence of the increasing sophistication of the bathtub. As Mrs. Vekemans-Leurquin indicated during her historical overview, the bathtub is an object which has changed with the needs of each era, such as the modern need for relaxation. The Tribunal also finds that the placement of the goods in issue outside the bathroom does not alter their nature as "bathtubs." As Mrs. Vekemans-Leurquin mentioned, in this day and age, bathtubs can be installed in bedrooms, family rooms or exercise rooms.

8. *Supra*, note 6.

9. Paris: Librairie Larousse, 1989 at 153.

10. Émile Littré, *Dictionnaire de la langue française*, volume 1, Jean-Jacques Pauvert, 1956 at 826.

Furthermore, even though section 20 does not contain the words "required to be permanently installed," the bathtubs in issue in this appeal are permanently installed. To this end, the evidence has shown, for example, that these bathtubs are connected to the building sewer and to the fuse box of the dwelling and that they are often surrounded by ceramic. The Tribunal is of the opinion that it would be somewhat illogical and costly to remove a bathtub after extensive installation work.

For these reasons, the Tribunal is convinced that the bathtubs in issue are "bathtubs" within the meaning of section 20 of Part I of Schedule IV to the Act.

Michèle Blouin
Michèle Blouin
Presiding Member

John C. Coleman
John C. Coleman
Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member