

Ottawa, Monday, January 20, 1992

Appeal No. AP-90-188

IN THE MATTER OF an appeal heard on October 23, 1991, 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 24, 1991, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

PRINTING UNLIMITED (1985) LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The appellant is liable to pay federal sales tax even though it sold goods on a tax-exempt basis as a result of misrepresentations by purchasers as to their tax exemption status.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-188

PRINTING UNLIMITED (1985) LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act. The issue before this Tribunal is whether the appellant, a licensed manufacturer, is liable to pay sales tax on sales it made on a tax-exempt basis as a result of improper use of tax exemption certificates by licensed purchasers and of sales to persons who were not tax-exempt license holders.

HELD: *The appeal is dismissed. The appellant is liable to pay federal sales tax even though it sold goods on a tax-exempt basis as a result of misrepresentations by purchasers as to their tax exemption status.*

Place of Hearing: Calgary, Alberta

Date of Hearing: October 23, 1991

Date of Decision: January 20, 1992

*Tribunal Members: Arthur B. Trudeau, Presiding Member
Sidney A. Fraleigh, Member
W. Roy Hines, Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Janet Rumball

*Appearances: R. W. (Ron) Crudge, for the appellant
Howard Baker, for the respondent*

Appeal No. AP-90-188

PRINTING UNLIMITED (1985) LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
SIDNEY A. FRALEIGH, Member
W. ROY HINES, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from a decision of the Minister of National Revenue (the Minister) issued on January 24, 1991, with respect to unpaid sales tax on sales to certain licensed and unlicensed purchasers during the June 1, 1986, to October 31, 1989, period.

The appellant, Printing Unlimited (1985) Ltd., is a licensed manufacturer and its business consists of printing articles such as business cards, brochures and other like products.

In early December 1989, an officer with the Department of National Revenue, Customs and Excise (Revenue Canada) performed an audit of the appellant's sales invoices with respect to sales tax payments for the June 1, 1986, to October 31, 1989, period. As a result of this audit, on May 15, 1990, the appellant was assessed for unpaid sales tax in the amount of \$17,005.75, including penalty and interest.

On July 27, 1990, the appellant objected to the assessment on several grounds: its clients had misrepresented their license number to request sales tax exemption; Revenue Canada had used wrong rates for tax calculations; and certain deductions for transportation costs had not been taken into account.

On January 24, 1991, the Minister allowed in part the appellant's objections and varied the assessment to take into account the deduction for transportation costs pertaining to the relevant sales. However, the Minister rejected the other grounds for the objection and maintained the assessment with respect to tax owing on sales that had been made on a tax-exempt basis in error.

The central issue in this appeal is whether the appellant is liable for unpaid sales tax on sales that were made on a tax-exempt basis in error where either purchasers misrepresented their tax exemption certificate or were not holders of a tax exemption certificate. There is also the issue of determining if the sales tax rate should be calculated on the basis of the sale price, as shown on the invoice, or adjusted to reflect a price that included the applicable tax.

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

Mr. Ron Crudge, the appellant's General Manager, testified at the hearing. Since becoming a licensed manufacturer in 1985, the appellant has charged sales tax to its clients where the purchasers were not tax exempt. Alternatively, it sold tax exempt to purchasers who presented sales tax exemption certificates. Mr. Crudge admitted that the accuracy of the exemption certificates presented by customers were at times verified, but that verbal information was accepted as valid. Mr. Crudge was generally unsatisfied with the amount of instructions given or available from Revenue Canada with respect to verifying the proper tax status of individual sales. This was especially difficult to do when a purchaser indicated a valid tax license number for the purchase of materials that were not entitled to tax exemption, such as printed matter used in the office as opposed to materials used in a production process, the former being taxable and the latter not taxable.

In cross-examination, the witness admitted that the audit determined that tax-exempt purchases were made by customers who did not have a license or certificate. Mr. Crudge did not agree that this list amounted to 60 firms as suggested by counsel for the respondent. Nonetheless, Mr. Crudge maintained that he personally was not aware at the time of the sales that these persons were not licensed, although he admitted having relied on verbal information. As a result of the audit and assessment for tax owing, Mr. Crudge wrote to customers requesting payment for sales tax that had not been charged, and a sum of \$ 5,636.78 was paid by customers and subsequently remitted to Revenue Canada.

Mr. George Pubben, the officer who performed the audit, also testified at the hearing. He explained the process followed in conducting the audit. A review of all the invoices was carried out. In cases where there was no tax charged on the invoice, Mr. Pubben would verify if the purchaser was a valid license holder by referring to a book that contained the names of all the license holders in Canada. Mr. Pubben testified that in 60 cases, the purchasers were not licensed. In another nine cases, the purchasers were indeed licensed, but had made use of their exemption improperly as they were not entitled to purchase, tax exempt, certain materials, e.g., business cards and other office supplies, as such materials were not used in the production or manufacture of goods.

The appellant claimed, in argument, that the firm had not received sufficient training and information to determine which sales were to be made tax exempt or not and how to verify the validity of information provided by its customers respecting tax exemption eligibility. In Mr. Crudge's view, the company had collected and remitted tax in the past to the best of its abilities, and Revenue Canada had simply waited too long to perform the audit and inform it of the errors. Finally, it was claimed that the amounts assessed for penalty and interest are excessive, and there should be some consideration given to the fact that the system is complex and difficult to understand.

Counsel for the respondent argued that the appellant has the onus to prove that the assessment is incorrect. The evidence revealed that the assessed sales were incorrectly made on a tax-exempt basis. Consequently, the assessment of unpaid sales tax calculated on the sale price of the goods, as provided for by the Act, is correct and is according to a prior decision rendered by

the Tribunal, *Les Presses Lithographiques Inc. v. The Minister of National Revenue*.² Therefore, the appeal should be dismissed. Furthermore, the appellant was entitled to recover the unpaid sales tax directly from its customers in accordance with subsection 116(1) of the Act.

There is no issue between the parties, in this case, regarding whether sales tax is payable on sales of goods to unlicensed purchasers. It is common ground that such sales are taxable. The central issue in this appeal, as noted earlier, is whether, in the absence of having collected sales tax because of an improper use of a sales tax exemption certificate or as a result of an ineligible use by a licensed manufacturer, the appellant is still liable for sales tax.

There is uncontroverted evidence that in nine cases, tax-exempt sales were made to license holders in error because of ineligible use. Indeed, since the audit, the appellant has written to these clients and requested payment for unpaid taxes as well as corresponding interest and penalty. An amount in excess of \$5,000 has been collected and remitted to Revenue Canada.

Also there is conclusive evidence that in the case of some 60 other cases, sales were made on a tax-exempt basis to purchasers who did not have a license or certificate at all. In these cases, the appellant appears to have been less successful in obtaining reimbursements for unpaid taxes. However, that is of no consequence for the Tribunal's decision.

As the appellant has failed to charge sales tax in cases where purchasers were not eligible for tax exemption, it is the appellant who is responsible for the tax, unless there are circumstances that shift the tax burden on the purchaser as provided for by subsection 116(4) of the Act. That is not the case here, as there was no evidence adduced to satisfy the requirements of that subsection. Prior to accepting that a purchaser (claiming to be a tax exemption certificate holder) was eligible for tax exemption, the appellant had the responsibility of verifying whether the goods purchased were subject to tax-exempt use. Furthermore, as provided for by the Act, unless the exemption statement or certificate is in writing and it is established that the vendor acted with due care and diligence in relying on the statement or certificate, the manufacturer or producer (i.e., the vendor in this case) is liable for the unpaid sales tax. In light of this last requirement, the appellant had at least to verify whether the purchaser was a legitimate licence holder, which it did not.

Moreover, no assistance can be provided to the appellant in response to its claim that the law is complicated and that the information provided by Revenue Canada was not sufficient to verify the validity of tax exemption claimed by its clients. In addition, the Tribunal has no jurisdiction to vary the penalty or interest when imposed according to the Act.

There remains the question of whether the rate of tax was properly applied. In cases where no sales tax was shown on the invoice, there was no evidence to support the proposition that such price was tax included. Therefore, in accordance with the decision rendered in *Les Presses Lithographiques*, the Tribunal concludes that the tax is to be calculated based on the selling price appearing on the invoice.

2. Canadian International Trade Tribunal, Appeal No. 2997, June 26, 1989.

For the foregoing reasons, the appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member