



Ottawa, Thursday, December 17, 1992

Appeal No. AP-91-023

IN THE MATTER OF an appeal heard on
September 29, 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 24, 1991, relating to a
notice of objection served under section 81.15 of the
Excise Tax Act.

BETWEEN

LAWSON MARDON GROUP LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

Michèle Blouin
Michèle Blouin
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

W. Roy Hines
W. Roy Hines
Member

Michel P. Granger
Michel P. Granger
Secretary



Ottawa, Thursday, December 17, 1992

Appeal No. AP-91-024

IN THE MATTER OF an appeal heard on
September 29, 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 24, 1991, relating to a
notice of objection served under section 81.15 of the
Excise Tax Act.

BETWEEN

LAWSON MARDON GROUP LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Michèle Blouin
Michèle Blouin
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

W. Roy Hines
W. Roy Hines
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-91-023 and AP-91-024

LAWSON MARDON GROUP LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

One of the appellant's divisions, Lithographie Montréal, prints advertising material in the form of flyers or brochures, primarily for advertising agencies and other businesses. As part of these activities, the agencies provide the appellant with films and advanced layouts used in the production of advertising material. The issue in these appeals is whether the assessments made in respect of the appellant are properly founded in law and, more specifically, whether the appellant is liable for payment of sales tax on transactions between itself and the advertising agencies and other businesses in question.

HELD: *Appeal No. AP-91-024 is allowed. Appeal No. AP-91-023 is allowed in part only since the appellant renounced its claims to some of the transactions at issue. The Tribunal finds that the determining factor in these cases is the fact that the appellant's clients design films and advanced layouts which remain their property and which the appellant uses to produce the advertising material in issue using the lithographic process. The Tribunal is of the opinion that the appellant holds neither intellectual property nor sales rights to the advertising material in issue. In both instances, the rights belong to the appellant's clients who, therefore, become subject to the expression "any person, firm or corporation that owns, holds, claims or uses any ... proprietary, sales or other right to goods being manufactured" used in paragraph (b) of the definition of "manufacturer or producer" in subsection 2(1) of the Excise Tax Act. The appellant's clients, and not the appellant, are therefore liable for payment of sales tax under subsection 50(1) of the Excise Tax Act.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 29, 1992
Date of Decisions: December 17, 1992

Tribunal Members: Michèle Blouin, Presiding Member
Arthur B. Trudeau, Member
W. Roy Hines, Member

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Dyna Côté

Appearances: Claude P. Desaulniers, for the appellant
Rosemarie Millar, for the respondent

Appeal Nos. AP-91-023 and AP-91-024

LAWSON MARDON GROUP LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
ARTHUR B. TRUDEAU, Member
W. ROY HINES, Member

REASONS FOR DECISIONS

These are appeals of assessments pursuant to section 81.19 (formerly section 51.19) of the *Excise Tax Act*¹ (the Act) from decisions of the Minister of National Revenue (the Minister) under section 81.15 of the Act.

The appellant, Lawson Mardon Group Limited, is a company incorporated under Ontario legislation and formed by the merger of Lawson & Jones and Mardon Packaging in January 1986.

In the case of Appeal No. AP-91-023, the appellant was assessed for unpaid taxes in the amount of \$109,582.84 for the period from January 30, 1984, to March 2, 1986. Following the service of a notice of objection, this assessment was amended, and the new amount, \$61,172.74, was established by the Minister's notice of decision. Lawson Mardon Group Limited appealed up to \$58,967.19 of the assessment. As for Appeal No. AP-91-024, an assessment for unpaid taxes for the period from March 2 to September 28, 1986, was made in the amount of \$46,493.85. Following the service of a notice of objection, a notice of decision amended the amount to \$31,246.23. Lawson Mardon Group Limited appealed up to \$22,074.74 of this assessment. Following the Minister's decisions, the two assessments were appealed to the Tribunal, and the appeals were heard together.

The parties agree that the appellant is a service business. One of its divisions, Lithographie Montréal, works in the field of design and production of advertising material. It also prints advertising material, including flyers and brochures. The appellant's clients are advertising agencies and other businesses. It is also admitted that, as part of these activities, the appellant's clients provide it with films and advanced layouts used in the production of advertising material.

The Tribunal notes that the appellant received two assessments, but that each assessment covered specific transactions with certain clients. The Tribunal also notes that, at the hearing, the appellant renounced its claims with respect to transactions involving two of its clients, namely, Groupaction Marketing and Proserv Inc.

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

The issue in these appeals is whether the assessments are founded in law and, more specifically, whether the appellant is liable for the payment of sales tax on transactions between itself and its clients.

The appellant presented two arguments in defence of its claim that it is not liable for the payment of sales tax. The appellant first argued that its clients are the legal manufacturers of the advertising material sold in accordance with paragraph (b) of the definition of "manufacturer or producer" in subsection 2(1) of the Act and that, as such, are liable for the payment of sales tax. According to counsel for the appellant, those clients hold the rights, more specifically the copyright and proprietary rights to the films and advanced layouts provided to the appellant for the purpose of printing the advertising material. The same argument applies to the advertising material that the appellant can sell only to its clients.

The second argument presented by counsel was that, if the appellant is deemed to be the manufacturer of the advertising material, it can invoke the principle of joint liability prescribed in subsection 116(4) of the Act (formerly subsection 70(3)) since its clients have incorrectly stated that the goods were exempt from tax. Being held jointly and severally liable for the payment of tax with its clients, the appellant can use, according to its counsel, all possible ground of defence available to persons found jointly and severally liable. To this end, counsel noted that some of the appellant's clients had remitted tax to the respondent and, by that fact, had relieved the appellant of this obligation. Counsel also argued that other clients had resold the advertising material for purposes and under conditions which made the resale of the goods exempt from tax and that they were therefore relieved of the obligation to pay the tax. Counsel claimed that the appellant can also use this defence.

The Tribunal readily notes that most of the evidence provided at the hearing related to the second argument presented by the appellant. The Tribunal, however, allows the appeal on the first ground, namely, that the appellant is not the manufacturer of the advertising material in issue and that its clients are then liable for the payment of sales tax. The Tribunal finds that the determining factor in these cases is the fact that the appellant's clients design the films and advanced layouts which remain their property and which the appellant uses to produce the advertising material in issue using the lithographic process.

The Tribunal is convinced that the appellant holds no intellectual property right to the advertising material that it produces. The appellant uses a film or an advanced layout to which its clients, or their clients as the case may be, clearly hold the intellectual property right. This right would undeniably apply to the advertising material when produced by the appellant. Moreover, the appellant may not use, as it chooses, the material so produced. It may well own the support material containing the information, but it holds no right to the contents. The Tribunal is of the opinion that, in both instances, rights belong to the appellant's clients who are covered by the expression "any person, firm or corporation that owns, holds, claims or uses any ... proprietary, sales or other right to goods being manufactured" used in paragraph (b) of the definition of "manufacturer or producer" in subsection 2(1) of the Act.

In comparing the provisions contained in paragraph (f) of the definition of "manufacturer or producer" in subsection 2(1) of the Act which specifically covers persons acting for others, the Tribunal rejects the respondent's claims that paragraph (b) applies only if there is a client-agent type of relationship. With respect to paragraph (b) of the definition of "manufacturer or producer" in subsection 2(1) of the Act, the Tribunal is of the opinion that each case must be analysed in light of its specific circumstances, taking into consideration the nature of the industry in question and the commercial practices specific to that industry.

The Tribunal considers the appellant's clients to be manufacturers or producers of the advertising material. The appellant's clients, and not the appellant, are liable for payment of sales tax under subsection 50(1) (formerly subsection 27(1)) of the Act. The assessments made in respect of the appellant are therefore not founded in law with regard to these transactions.

The Tribunal, therefore, allows Appeal No. AP-91-024. Appeal No. AP-91-023 is allowed in part, given that the appellant renounced its claims with respect to transactions involving Groupaction Marketing and Proserv Inc.

Michèle Blouin
Michèle Blouin
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

W. Roy Hines
W. Roy Hines
Member