



Ottawa, Thursday, May 20, 1993

Appeal No. AP-91-031

IN THE MATTER OF an appeal heard on February 16, 1993, under section 81.22 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 September 24, 1990, relating to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

D.J. MEDIA ENTERPRISES INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary



Ottawa, Thursday, May 20, 1993

Appeal No. AP-92-068

IN THE MATTER OF an appeal heard on February 16, 1993, under section 81.21 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 December 2, 1991, relating to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

BIO-STATIC SYSTEMS LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-91-031 and AP-92-068

D.J. MEDIA ENTERPRISES INC.

and

BIO-STATIC SYSTEMS LTD.

Appellants

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in these appeals is whether photocopiers sold by the appellants qualify for an exemption of federal sales tax under subparagraph 1(a)(i) of Part XIII of Schedule III to the Excise Tax Act, as machinery and apparatus sold to or imported by manufacturers or producers for use by them primarily and directly in the manufacture of goods, or whether the photocopiers are office equipment excluded from the exempting provision by virtue of paragraph 1(l) of Part XIII of Schedule III to the Excise Tax Act.

HELD: *The appeals are dismissed. The mere fact that photocopiers "produce" copies does not indicate that they are used in the production of goods within the meaning of subparagraph 1(a)(i) and that they are not office equipment under paragraph 1(l) of Part XIII of Schedule III to the Excise Tax Act. The witnesses testified that some of their customers may use the photocopiers as printing apparatus. The appellants should have called, as witnesses, representatives of their customers to testify in this regard and, should the occasion have arisen, to reveal the percentage of time that the photocopiers are used with respect to printing and office matters.*

Place of Hearing: Winnipeg, Manitoba

Date of Hearing: February 16, 1993

Date of Decision: May 20, 1993

*Tribunal Members: Desmond Hallissey, Presiding Member
Michèle Blouin, Member
Lise Bergeron, Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Janet Rumball

*Appearances: E. R. (Ted) Reid, for the appellants
Brian Tittlemore, for the respondent*

Appeal Nos. AP-91-031 and AP-92-068

D. J. MEDIA ENTERPRISES INC.

and

BIO-STATIC SYSTEMS LTD.

Appellants

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
MICHÈLE BLOUIN, Member
LISE BERGERON, Member

REASONS FOR DECISION

This is a consolidation of two appeals heard under sections 81.21 and 81.22 of the *Excise Tax Act*¹ (the Act) from two determinations that disallowed federal sales tax refund claims. The appeals were heard together, as they involved similar facts and the same provisions of the Act.

In Appeal No. AP-91-031, the appellant, D.J. Media Enterprises Inc. (D.J. Media), carries on business as a seller of photocopiers capable of producing and collating multiple copies. On July 26, 1990, the appellant filed an application for refund of federal sales tax in the amount of \$14,112.90. On September 24, 1990, the refund claim was disallowed. On September 25, 1990, the appellant served a notice of objection with respect to the determination, in which it argued that the sales at issue were made under conditions that would have rendered the sales exempt from the federal sales tax and, therefore, that it was entitled to a refund under section 68.2 of the Act. The Minister of National Revenue (the Minister) did not make a decision within 180 days after the notice of objection was served, hence, the appeal of that determination to the Tribunal.

In Appeal No. AP-92-068, the appellant, Bio-Static Systems Ltd. (Bio-Static), also carries on business as a seller of photocopiers. On June 17, 1991, it filed an application for refund of federal sales tax in the amount of \$37,367.05. On December 2, 1991, the refund claim was disallowed. On December 11, 1991, the appellant served a notice of objection with respect to the determination, in which it requested the Minister's consent to appeal the matter directly to the Tribunal. The appellant claimed that the sales at issue were made under conditions that would have rendered the sales exempt from federal sales tax and, therefore, that it is entitled to a refund under section 68.2 of the Act.

The main issue in these appeals is whether the goods in issue qualify for an exemption of federal sales tax under subparagraph 1(a)(i) of Part XIII of Schedule III to the Act, as machinery and apparatus sold to or imported by manufacturers or producers for use by them primarily and directly in the manufacture of goods. Other issues, such as the question as to whether the sales were made to the actual users of the goods in issue or to leasing companies and whether part of Bio-Static's refund claim is statute-barred, need not be addressed, as the Tribunal finds that the photocopiers in issue are excluded from the above-mentioned exempting provision of the Act.

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

The appellants' argument, briefly stated, is that the photocopiers in issue were sold to producers and manufacturers for use by them directly and primarily in the manufacture or production of goods, more precisely copies, as provided in subparagraph 1(a)(i) of Part XIII of Schedule III to the Act. According to the appellants, as machinery and apparatus used for that purpose are exempt from federal sales tax, the sales were, thus, made under conditions that would have rendered the sales exempt from federal sales tax, and the appellants are, therefore, entitled to a refund of federal sales tax under section 68.2 of the Act.

The appellants' representative relied upon the testimonies of Mr. Keith Thompson and Mr. Csaba Begai, the owners and presidents of D.J. Media and Bio-Static, respectively, who, at the hearing, testified that the photocopiers in issue "produce" copies. The Tribunal, however, notes that the witnesses' companies are engaged in the selling of office equipment, which includes photocopiers and fax machines, as well as postage equipment and word processors as it regards D.J. Media and Bio-Static, respectively. Moreover, during cross-examination or in response to the Tribunal's question, as the case may be, both witnesses testified that they had not asked their customers for a certificate of exemption at the time of the sale nor had they supplied the Department of National Revenue with any information as to the end use of the photocopiers in issue.

Now, in order to succeed in their appeals, the appellants needed to demonstrate not only that the photocopiers were sold to producers or manufacturers for use by them primarily and directly in the manufacture or production of goods but, also, that the photocopiers are not office equipment excluded from the exempting provision under paragraph 1(l) of Part XIII of Schedule III to the Act. After reviewing the evidence, the Tribunal must conclude that, but for the testimonies of the appellants' presidents and owners, there is no evidence whatsoever as to the actual end uses of the photocopiers after they were sold as part of the appellants' office equipment businesses. The mere fact that photocopiers "produce" copies does not indicate that they are used in the production of goods within the meaning of subparagraph 1(a)(i) and, they are not office equipment under paragraph 1(l) of Part XIII of Schedule III to the Act. The Tribunal notes, in this regard, that Minolta photocopiers EP4301, EP410Z, EP4230 and EP570Z (Exhibit A-1), for which Bio-Static claimed a refund of federal sales tax, are advertised or referred to as office equipment or photocopiers. While the witnesses testified that some of their customers may use the photocopiers as printing apparatus, the appellants could have called, as witnesses, representatives of their customers to testify in this regard and, should the occasion have arisen, to reveal the percentage of time that the photocopiers are used with respect to printing and office matters. In sum, the appellants have failed to establish their right to the exemption with respect to each and every sale that they made to their customers.

In light of the foregoing, the appeals are dismissed.

Desmond Hallissey

Desmond Hallissey
Presiding Member

Michèle Blouin

Michèle Blouin
Member

Lise Bergeron

Lise Bergeron
Member