CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, October 14, 1992

Appeal No. AP-91-015

IN THE MATTER OF an appeal heard on July 23, 1992, 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 June 28, 1990, relating to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

SOLCAN 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

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-91-015

SOLCAN LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The appellant is a licensed manufacturer of solar equipment such as solar panels, heat exchangers, water tanks and support racks, which are used in the production and installation of a complete product called a "solar heating system." The issue in this appeal is whether the appellant was properly assessed for tax on the total sale price paid by a customer for the solar heating system. The appellant argued that tax is payable only on the cost of materials that it provided, reduced by the amount of the grant that it received from the Department of Energy, Mines and Resources on the particular sale. Also, it must be determined whether the appellant was properly credited for the cost of installation that may be excluded in the calculation of the sale price of the goods manufactured or produced in Canada on which tax is imposed pursuant to section 50 of the Excise Tax Act.

HELD: *The appeal is dismissed.*

Place of Hearing:	*Ottawa, Ontario.*
Date of Hearing:	*July 23, 1992*
Date of Decision:	*October 14, 1992*
Tribunal Members:	*Desmond Hallissey, Presiding Member* *Michèle Blouin, Member* *Charles A. Gracey, Member*
Counsel for the Tribunal:	*David M. Attwater*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Robert K. Swartman, for the appellant* *Brian Tittemore, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-015

SOLCAN LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
MICHÈLE BLOUIN, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal of an assessment made pursuant to section 81.19 of the *Excise Tax Act*[1] (the Act). The appellant was assessed for an amount of $20,803.82 for federal sales tax not remitted on taxable sales, goods purchased tax exempt and diverted to taxable use, penalty and interest.

The appellant is a licensed manufacturer of solar equipment such as solar panels, heat exchangers, water tanks and support racks, which are used in the production and installation of a complete product called a "solar heating system." The appellant's witness, Mr. Robert K. Swartman, who also served as its representative, testified that the goods were sold on both an installed basis to end users and a non-installed basis to dealers who would arrange for installation. Mr. Scott Arner, a senior auditor with the London District Excise Tax Office of the Department of National Revenue for Customs and Excise (Revenue Canada) who conducted the audit of the appellant's business transactions, explained that approximately two thirds of the appellant's sales were on an installed basis.

Commencing in 1985, the appellant, as a manufacturer of solar water heaters, received grants from the Department of Energy, Mines and Resources (EMR), which reduced the purchase price of the solar heating system. The agreement between EMR and the appellant specified the maximum amount that a customer could be charged for the system at a price that included the cost of installation. The amount of the grant per sale was based on the energy output of the system. It typically represented one half of the price that the customer would otherwise be charged. In other words, it reduced the price charged to the customer by approximately one half.

According to Mr. Peter Swartman, a witness for the appellant, sales tax was payable only on the cost of materials supplied by the appellant to a customer. Furthermore, any grant received from EMR should be subtracted from the cost of materials, the appellant being liable for tax only on the difference, if any, between these two sums. Thus, in cases where the amount of the grant equalled or exceeded the cost of materials, no sales tax would be payable.

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

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He further contended that tax was not payable on any other price paid by a customer, including the cost of installation or the appellant's profit.

In contrast, the respondent assessed the appellant for tax on the total price paid by the customer, which was the actual cost of the solar heating system reduced by the amount of the grant from EMR. This was further reduced by 10 percent, representing the cost of installation of the system, which was deducted pursuant to clause 46(*c*)(ii)(A) of the Act and the *Erection or Installation Costs Regulations*[2] (the Regulations). With regard to this latter deduction, the appellant argued that it should be allowed the actual cost of installation of the system which, Mr. Robert Swartman alleged, represented approximately half the total product cost.

The issue in this appeal, therefore, is to determine the appropriate basis on which tax should be imposed on the appellant. Also, the Tribunal must determine the appropriate basis on which the cost of installation may be determined and excluded from the sale price of the goods manufactured or produced in Canada on which tax is imposed pursuant to section 50 of the Act.

With regard to the first issue, namely the basis on which tax should be imposed, the Tribunal is in agreement with the respondent. Pursuant to subsection 50(1) of the Act, sales tax is imposed on the sale price of all goods produced or manufactured in Canada. "Sale price" is defined in section 42 of the Act as including "the amount charged as price" and "any amount that the purchaser is liable to pay to the vendor by reason of or in respect of the sale in addition to the amount charged as price." Clearly, the sale price of the solar water heaters charged to a purchaser included more than the cost of materials supplied to that customer and included the total price paid by the customer. The Tribunal finds no support in the applicable law for the appellant's claim that it need pay tax only on the difference, if any, between the cost of materials and the amount of the EMR grant.

With regard to the second issue, namely the installation deduction, Mr. Robert Swartman argued that the appellant should have been allowed an installation deduction of greater than 10 percent on the sale price of the solar equipment. He declared that the firm sold identical goods on both an installed and a non-installed basis in sufficient numbers and with sufficient regularity to permit the difference in price to reflect the cost of installation. Moreover, he contended that all of the records necessary to substantiate these differences had been furnished to the auditor. It was the appellant's position that the auditor and Revenue Canada had misconstrued some of these costs and had failed to realize that they were, in fact, costs of installation. The respondent, however, allowed only a 10-percent deduction in accordance with the Regulations on the ground that an examination of the supporting records did not contain specific dollar amounts to clearly establish the actual cost of installation.

Pursuant to the Act and Regulations, the cost of installation of goods manufactured or produced in Canada may be excluded in the calculation of the sale price of those goods by one of four methods. Section 4 of the Regulations provides that the cost of installation may be determined by the difference between the price of goods sold on an installed basis and the price of identical goods sold on a non-installed basis. Where the manufacturer or producer does not regularly sell identical goods at a price that does not include installation, such cost may be determined by an amount equal to the aggregate of numerous costs enumerated in section 5 of the Regulations. In the alternative, section 7 provides that the cost of installation may be determined as a percentage of the sale price equal to the average cost of installation, as a

2. SOR/83-136, Canada Gazette Part II, Vol. 117, No. 4, February 4, 1983.

percentage, of all such goods sold in the previous year. These last two methods are qualified in section 8, which states that all costs of installation determined under section 5 or 7 shall be supported by documentary evidence. Finally, in lieu of the above three methods, the cost of installation is determined by reference to the Schedule to the Regulations which indicates that goods such as those in issue are allowed a 10-percent deduction.

While it was incumbent upon the appellant to fully document its claim, it became clear at the hearing that Mr. Robert Swartman was not in a position to substantiate the appellant's claim. Accordingly, and with the agreement of counsel for the respondent, the Tribunal granted the appellant an extension of time to prepare and submit to the Tribunal further documentation to substantiate its costs of installation. Counsel for the respondent was allowed to respond to these submissions. Such further submissions and response were duly made and form part of the record of this appeal.

The Tribunal acknowledges that it is feasible that the cost of installation incurred by the appellant exceeded 10 percent of the sale price of the goods. It nevertheless dismisses the appeal on this point. The evidence submitted by the appellant was insufficient to permit the Tribunal to determine the actual cost of installation for each system sold. Nor were the records sufficiently clear to establish the identical nature of jobs done on an installed and a non-installed basis so as to allow the difference to represent the cost of installation. The Regulations require that the taxpayer "regularly [sell] identical goods at a price that does not include installation." In the Tribunal's opinion, this requirement is exacting, and the appellant has failed to establish that this standard was met.

Similarly, with regard to the second and third methods of determining the cost of installation as mentioned above, section 8 of the Regulations is unequivocal in requiring the appellant to support all costs by documentary evidence. A review of the evidence provided by the appellant has not convinced the Tribunal that this has been done. The Tribunal is of the view that a different method of bookkeeping would have permitted the appellant to detail its cost of installation on an individual job basis thus providing the evidence required by the Regulations.

The appellant, in its brief, raised a minor issue, questioning whether it had been properly assessed for federal sales tax on sales of jobbed goods to its customers. This was not adequately addressed at the hearing, and no evidence was submitted to the Tribunal suggesting that the appellant was not properly assessed.

Accordingly, the appeal is dismissed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Charles A. Gracey
Charles A. Gracey
Member