CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, February 23, 1994

Appeal No. AP-91-118

IN THE MATTER OF an appeal heard on September 9, 1993, 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 April 25, 1991, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

STRETCH COACHWORKS INC. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-91-118

STRETCH COACHWORKS INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 81.19 of the Excise Tax Act of an assessment of the Minister of National Revenue. The appellant was assessed in the amount of $16,761.38, plus interest and penalty, for unpaid taxes in respect of automobiles that it converted into limousines. The issue in this appeal is whether the automobiles, owned by the appellant and by persons other than the appellant, which were converted by the appellant into limousines, are subject to the excise tax applicable to automobiles in excess of 2,007 kg, under section 6 of Schedule I to the Excise Tax Act.

HELD: *The appeal is dismissed. The appellant manufactured and delivered to purchasers limousines, which are goods mentioned in Schedule I to the Excise Tax Act, and is, therefore, liable to pay the excise tax applicable to automobiles in excess of 2,007 kg, under section 6 of Schedule I to the Excise Tax Act. The Tribunal finds that the transactions where the appellant contracted with customers to manufacture limousines from automobiles supplied by those customers are deemed sales under subsection 23(3.1) of the Excise Tax Act and are, therefore, subject to the excise tax applicable to automobiles in excess of 2,007 kg.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*September 9, 1993*
Date of Decision:	*February 23, 1994*
Tribunal Members:	*Sidney A. Fraleigh, Presiding Member* *Kathleen E. Macmillan, Member* *Desmond Hallissey, Member*
Counsel for the Tribunal:	*Shelley Rowe*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Anthony Viele, for the appellant* *Brian Tittemore, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-118

STRETCH COACHWORKS INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
KATHLEEN E. MACMILLAN, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) of an assessment of the Minister of National Revenue. The appellant was assessed in the amount of $16,761.38, plus interest and penalty, for unpaid taxes in respect of automobiles that it converted into limousines. The issue in this appeal is whether the automobiles, owned by the appellant and by persons other than the appellant, which were converted by the appellant into limousines, are subject to the excise tax applicable to automobiles in excess of 2,007 kg (the weight tax), under section 6 of Schedule I to the Act.

The appellant is a licensed manufacturer in the business of converting automobiles into limousines. In some instances, the automobiles were owned by the appellant and, in other instances, they were owned by the appellant's customers. To convert the automobiles into limousines, the appellant cuts the automobiles in half, extends the frame, adds side panels and installs various items, including seats, video cassette recorders and stereos. Where the automobiles, which were converted into limousines, were owned by the appellant's customers, the customers would only pay for the value added to the automobiles as a result of the conversion process.

The owner of Stretch Coachworks Inc., Mr. Anthony Viele, testifying on behalf of the appellant, stated that he was informed by officials of the Department of National Revenue (Revenue Canada) that the appellant would only be liable for the weight tax where it owned the automobiles that were converted into limousines. He stated that he also consulted a friend, who previously worked with the federal sales tax section of Revenue Canada, who confirmed the information given by Revenue Canada officials. The appellant, therefore, did not collect the weight tax in respect of the automobiles, which it did not own, at the time that they were converted into limousines.

Mr. Viele pointed out that he had been informed by his wife, who was not able to attend the hearing, that, on several occasions when she went to the Revenue Canada office to pay the weight tax collected in respect of automobiles owned by the appellant at the time of conversion, Revenue Canada officials initially refused to accept payment of the weight tax and only accepted

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

payment after she had insisted. According to Mr. Viele, this was because Revenue Canada officials did not know that such a tax existed.

The officer who conducted the audit of the appellant, Ms. Brenda Lockhart, appeared on behalf of the respondent to explain how she determined the amount of the appellant's assessment. She admitted that, at the time of the audit, she did not know the details concerning the weight tax, but that she obtained information by consulting her supervisor and Revenue Canada memoranda and ruling cards. After having reviewed this information, she determined that the weight tax was to be remitted by the person who had caused the automobiles to be over the weight limit, and not necessarily by the person who owned the automobiles.

Ms. Lockhart reviewed her working papers outlining all of the appellant's sales during the assessment period from January 1, 1988, to April 30, 1990. In the working papers, she set out the actual amounts that were remitted to Revenue Canada and indicated the amount that should have been remitted based upon the information concerning models and weights of the automobiles manufactured by the appellant, as supplied to her by Mrs. Viele, and the provisions of the Act. She was told that the automobiles were under 2,007 kg prior to their conversion into limousines. She found that, with respect to the automobiles which the appellant did own, the appellant had incorrectly calculated the amount owing and had, therefore, remitted the incorrect amount of weight tax. With respect to the automobiles owned by the appellant's customers, she found that the appellant had not collected or remitted any weight tax, although it was required by the Act to do so.

Mr. Viele, on behalf of the appellant, argued that he had acted in accordance with the representations of Revenue Canada officials and that at no time did any officials inform him that he had misinterpreted how the weight tax was to be applied. He stated that, on the basis of those representations, he did not collect the weight tax where the automobiles were not owned by the appellant and that, if the appellant were required to pay the weight tax now, it would suffer extreme hardship necessitating permanent closure.

Counsel for the respondent argued that the appellant is liable to pay the weight tax under section 23 of the Act. Counsel argued that the conversion of the automobiles into limousines constitutes manufacturing or production in accordance with decisions of the Supreme Court of Canada[2] and the Federal Court of Canada.[3] The conversion of the automobiles into limousines constitutes a change in form, quality and property of the automobiles. As submitted by counsel, since there are no conditions under subsection 23(1) of the Act as to how the manufactured goods are to be "delivered" to the customer, the sale to the customer at a price representing the value added or conversion is sufficient to constitute delivery to the customer.

Counsel for the respondent argued that the appellant is liable to pay the weight tax under subsection 23(3.1) of the Act since it manufactured or produced the limousines from automobiles supplied by its customers and "pursuant to a contract for labour" with those customers. In counsel's view, the extended definition of "manufacturer or producer" in section 2 of the Act includes situations where an individual manufactures or produces on behalf of another person, using materials that are supplied by that person.

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2. *The Queen v. York Marble, Tile and Terrazzo Limited*, [1968] S.C.R. 140.

3. *The Queen v. Stuart House Canada Limited*, [1976] 2 F.C. 421; *The Queen v. E.J. Piggott Enterprises Ltd.*, [1973] C.T.C. 65, unreported, Federal Court of Appeal, Court File No. T-971-71, November 27, 1972; and *Fiat Auto Canada Limited v. The Queen*, [1984] 1 F.C. 203.

Finally, counsel for the respondent submitted that there was no direct evidence that Revenue Canada officials in any way misled the appellant in the manner in which it was to calculate the weight tax. Alternatively, counsel submitted that, if it is found that the appellant was misled or had been given wrong advice, the Crown is not bound by representations and interpretations given to taxpayers by its officials if such representations and interpretations are not prescribed by or are contrary to the law, as was stated by the Federal Court of Appeal in *Joseph Granger v. Employment and Immigration Commission*.[4]

Having reviewed the parties' submissions and the relevant legislative provisions, the Tribunal is of the view that the appellant was correctly assessed for unpaid weight taxes.

The Tribunal observes that section 23 of the Act provides as follows:

> *23. (1) Whenever goods mentioned in Schedules I and II are imported into Canada or manufactured or produced in Canada and delivered to a purchaser thereof, there shall be imposed, levied and collected ... an excise tax in respect of those goods at the rate set opposite the applicable item in whichever of those Schedules is applicable.*
>
> *(2) ... where goods are manufactured or produced and sold in Canada, the excise tax shall be payable by the manufacturer or producer at the time of delivery of the goods to the purchaser thereof.*

Thus, in order for a person to be liable for the tax prescribed by this section, the person must have manufactured or produced and delivered to a purchaser goods mentioned in Schedule I or II to the Act.

With respect to whether the limousines are goods mentioned in Schedule I or II to the Act, the Tribunal notes that paragraph 6(*a*) of Schedule I to the Act specifically refers to "automobiles, other than station wagons and vans designed primarily for use as passenger vehicles, in excess of two thousand and seven kilograms ... referred to as the "automobile mass limit." From the evidence of Ms. Lockhart, which was undisputed by Mr. Viele, the limousines in issue are automobiles which exceed the prescribed "automobile mass limit" and, therefore, qualify as goods mentioned in Schedule I to the Act.

In considering whether or not the conversion of automobiles into limousines constitutes manufacturing or production, the Tribunal was guided by the following definition of "manufacture" taken from the case *Minister of National Revenue v. Dominion Shuttle Company Limited*[5] and adopted by the Supreme Court of Canada in its decision in the *York Marble* case:

> *manufacture is the production of articles for use from raw or prepared material by giving to these materials new forms, qualities and properties or combinations whether by hand or machinery.*[6]

As was described by Mr. Viele, the conversion process involves cutting a standard size automobile in half, extending the frame, adding side panels and installing various items, including seats, video cassette recorders and stereos. In the Tribunal's view, this conversion

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4. [1986] 3 F.C. 70.
5. (1933), 72 Que. S.C. 15.
6. *Supra*, note 2 at 145.

process constitutes manufacturing, since the result is that a standard-size automobile is given the form, qualities and properties of a limousine.

The remaining issue to be determined is whether the appellant delivered the limousines which it manufactured to purchasers. In the Tribunal's view, the evidence clearly shows that the limousines manufactured from automobiles owned by the appellant were delivered to purchasers and are, therefore, subject to the weight tax calculated in accordance with the rates set out in section 6 of Schedule I to the Act. However, the Tribunal must also determine whether the limousines manufactured from automobiles owned by persons other than the appellant were delivered to purchasers and whether those limousines are subject to the weight tax.

According to subsection 23(3.1) of the Act, a person is deemed to have sold goods where, pursuant to a contract for labour, that person manufactures or produces goods mentioned in Schedule I to the Act from any article or material supplied by another person, for delivery to that other person. The evidence indicates that the appellant contracted with the owners of the standard-size automobiles to convert them into limousines and to deliver the limousines to the owners in exchange for an amount representing the value added to the automobiles. In the Tribunal's view, those limousines are deemed to have been sold according to subsection 23(3.1) of the Act and are, therefore, subject to the weight tax.

Having found that the appellant manufactured and delivered to purchasers goods mentioned in Schedule I to the Act, the Tribunal is of the view that the appellant is liable to pay the weight tax for which it was assessed by the respondent.

Accordingly, the appeal is dismissed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Desmond Hallissey
Desmond Hallissey
Member