



Ottawa, Monday, June 8, 1992

Appeal No. AP-91-166

IN THE MATTER OF an appeal heard on April 3, 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 from the Minister of
National Revenue dated August 12, 1991, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

VANCOUVER PUBLIC AQUARIUM ASSOCIATION

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

W. Roy Hines
W. Roy Hines
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-166

VANCOUVER PUBLIC AQUARIUM ASSOCIATION

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This appeal is filed under section 81.19 of the Excise Tax Act with respect to a decision rendered on August 12, 1991, by the Minister of National Revenue. The issue is whether acrylic viewing panels qualify for the exemption from federal sales tax under section 12, Part III, Schedule III to the Excise Tax Act as "Goods for placement as exhibits in public museums ... and not for sale."

HELD: *The appeal is allowed in part. The acrylic viewing panels do not constitute an exhibit.*

Place of Hearing: Vancouver, British Columbia

Date of Hearing: April 3, 1992

Date of Decision: June 8, 1992

*Tribunal Members: W. Roy Hines, Presiding Member
Kathleen E. Macmillan, Member
Sidney A. Fraleigh, Member*

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Janet Rumball

*Appearances: Werner H.G. Heinrich, for the appellant
John B. Edmond, for the respondent*

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VANCOUVER PUBLIC AQUARIUM ASSOCIATION

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TRIBUNAL: W. ROY HINES, Presiding Member
KATHLEEN E. MACMILLAN, Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

This appeal was filed under section 81.19 of the *Excise Tax Act*¹ (the Act).

The appellant, which operates the Vancouver Public Aquarium, filed a refund claim on November 1, 1990, requesting an amount of \$23,638.84 for sales tax paid on some of the materials used in the construction of its exhibit on Arctic Canada. The respondent, by a notice of determination dated December 19, 1990, disallowed the claim. A notice of objection was served by the appellant on March 12, 1991. A notice of decision dated August 12, 1991, was issued by the respondent, confirming the determination.

The issue in this appeal is whether acrylic viewing panels and installation materials, namely moulded fibreglass, shotcrete and paint used to construct replicas of naturally occurring rock formations, qualify for the exemption from federal sales tax provided in section 12, Part III, Schedule III to the Act as "Goods for placement as exhibits in public museums ... and not for sale."

At the outset of the hearing, counsel for the respondent informed the Tribunal that the Minister of National Revenue (the Minister) wished to be directed to reconsider his decision with respect to the installation materials (i.e., the moulded fibreglass, shotcrete and paint). Counsel for the appellant had no objection to this request, and the Tribunal so directs the Minister. Consequently, the only issue left for consideration by the Tribunal is whether the acrylic viewing panels qualify for the above-mentioned exemption.

The appellant operates the Vancouver Public Aquarium and is a self-supporting, non-profit organization. The appellant constructed a building to house an exhibit on Arctic Canada consisting of, *inter alia*, a viewing gallery. The acrylic viewing panels in issue, which hold water and permit viewing of the pool, were imported and used in the construction of this exhibit.

Counsel for the appellant argued that one cannot consider the panels as stand-alone items (which he agreed would not constitute an exhibit), but rather as essential and integral parts of the total exhibit; as he said, "without the panels you wouldn't have an Arctic Canada

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

exhibit." He argued that the panels in question form part of the structural support for the walls of the exhibit and that a fair reading of the statute suggests that it is to apply not only to goods which, standing alone, are exhibits, but also to goods that are intended to form part of the exhibit.

Counsel for the respondent argued that the acrylic viewing panels, while necessary for the construction of the exhibit, could not be construed as being an exhibit either as stand-alone items or as components of the finished exhibit. He maintained that the essential feature of the panels was to allow the public to see, not the panels themselves, but what was behind the panels.

The Tribunal notes that the wording of section 12, Part III, Schedule III to the Act is quite specific in providing that the goods must be for "placement as exhibits" and, thus, there is little scope for ambiguity. In the Tribunal's view, an acrylic viewing panel which forms part of the wall construction to enable viewers to see what is behind the partition cannot be regarded as an exhibit *per se*. An exhibit is something that is shown or exhibited and not a medium through which the public can view something else (in this case, the whales). Accordingly, the Tribunal finds that the acrylic viewing panels do not qualify for exemption as claimed by the appellant.

The appeal is allowed in part.

W. Roy Hines

W. Roy Hines
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member