

Ottawa, Friday, August 15, 1997

**Appeal No. AP-92-031**

IN THE MATTER OF an appeal heard on March 4, 1997, 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 February 21, 1992, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

**BETWEEN**

**LES PRODUITS SECURO INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed in part.

Raynald Guay  
Raynald Guay  
Presiding Member

Lyle M. Russell  
Lyle M. Russell  
Member

Charles A. Gracey  
Charles A. Gracey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-031**

**LES PRODUITS SECURO INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

This appeal relates to certain sales of safety glasses made by the appellant. The appellant claimed that it is a licensed wholesaler and not a “manufacturer or producer” under the *Excise Tax Act*. The appellant claimed that it was, therefore, correct in remitting tax calculated on the basis of its cost of goods rather than its sale price to its customers. The appellant claimed, in the alternative, that, if the Tribunal found it to be a “manufacturer or producer,” then its sales of safety glasses to Bell Canada and Hydro-Québec were exempt from sales tax on the grounds that those entities are themselves manufacturers or producers which purchased the safety glasses for use in the prevention of accidents in the manufacture or production of goods.

The issues in this appeal are, first, whether the appellant is a manufacturer or producer for purposes of the *Excise Tax Act* and, thus, *prima facie* liable to pay sales tax calculated on the basis of the sale price of its goods and, second, if the appellant is a manufacturer or producer, whether certain of its sales are nonetheless exempt from sales tax.

**HELD:** The appeal is allowed in part. The Tribunal is of the view that the appellant is a manufacturer or producer pursuant to the extended definition given to those terms under the *Excise Tax Act*. With respect to the claimed exemption, the Tribunal is not persuaded that Bell Canada is a manufacturer or producer and, therefore, concludes that the part of the appellant’s claim relating to its sales to Bell Canada must fail. The Tribunal is, however, persuaded that Hydro-Québec is a manufacturer or producer of electricity and that the safety glasses that it purchased were for use in the prevention of accidents in the manufacture or production of electricity.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: March 4, 1997  
Date of Decision: August 15, 1997

Tribunal Members: Raynald Guay, Presiding Member  
Lyle M. Russell, Member  
Charles A. Gracey, Member

Counsel for the Tribunal: John L. Syme

Clerk of the Tribunal: Anne Jamieson

Appearances: Christopher R. Mostovac, for the appellant  
Jan Brongers, for the respondent

**Appeal No. AP-92-031**

**LES PRODUITS SECURO INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: RAYNALD GUAY, Presiding Member  
LYLE M. RUSSELL, Member  
CHARLES A. GRACEY, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of an assessment of the Minister of National Revenue dated February 20, 1991, in the amount of \$40,833.32 for unpaid taxes, interest and penalty. The assessment covered the period from March 1, 1987, to December 31, 1990.

The issues in this appeal are, first, whether the appellant is a manufacturer or producer for purposes of the Act and, thus, *prima facie* liable to pay sales tax calculated on the basis of the sale price of its goods and, second, if the appellant is a manufacturer or producer, whether certain of its sales are nonetheless exempt from sales tax.

Counsel for the appellant called Mr. Serge Pétrin, President of Le Groupe Securo Inc., as the appellant's witness. Counsel for the respondent called Mr. Tho Le Quang, an auditor of the Department of National Revenue. The essential facts in this matter are not in dispute.

This appeal relates to the appellant's sales of safety glasses to Hydro-Québec and Bell Canada during the relevant period. Prior to January 1, 1989, the appellant imported fully assembled safety glasses which it sold to its customers. The appellant remitted sales tax as a licensed wholesaler, calculated on its cost of goods rather than on its sale price to its customers. On January 1, 1989, the appellant began importing the frames and lenses for safety glasses separately. These components were assembled and packaged for sale by the appellant. Believing its status as a licensed wholesaler to be unchanged, the appellant continued to remit sales tax calculated on its cost of goods. However, in assessing the appellant for unpaid sales tax, the respondent took the position that, from January 1, 1989, onward, the appellant was a manufacturer or producer of the safety glasses and, thus, should have remitted sales tax calculated on its sale price to its customers rather than on the cost of the components.

Counsel for the appellant advanced two arguments. His first position was that the appellant is not a manufacturer or producer under the Act. In support of that position, counsel noted Mr. Pétrin's testimony that only one of the appellant's 30 employees is involved in assembling the safety glasses in issue. Moreover, that employee spends only five or six hours of each working day on that activity. Counsel also referred the Tribunal to Mr. Pétrin's testimony that there was no difference in cost to the appellant between purchasing the safety glasses fully assembled and purchasing them in their component parts. Counsel stated that this fact

---

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

indicated that the assembly function added no “value” to the components and, therefore, that such assembly did not constitute “production or manufacture.”

Counsel for the appellant argued, in the alternative, that, if the Tribunal found the appellant to be a manufacturer or producer and, thus, *prima facie* liable to remit sales tax based on its sale price, then the appellant’s sales of safety glasses to Hydro-Québec and Bell Canada should be exempt from sales tax pursuant to subsection 51(1) of the Act. That subsection provides as follows:

51.(1) The tax imposed by section 50 does not apply to the sale or importation of the goods mentioned in Schedule III, other than those goods mentioned in Part XIII of that Schedule that are sold to or imported by persons exempt from consumption or sales tax under subsection 54(2).

Paragraph 1(d) of Part XIII of Schedule III to the Act provides for a sales tax exemption in respect of “safety devices and equipment sold to or imported by manufacturers or producers for use by them in the prevention of accidents in the manufacture or production of goods.”

Counsel for the appellant submitted that the safety glasses sold by the appellant were “safety devices” within the meaning of paragraph 1(d). Counsel for the respondent agreed.

With respect to the issue of whether or not the safety glasses were sold to manufacturers or producers for use by them in the prevention of accidents in the manufacture or production of goods, counsel for the appellant submitted that Hydro-Québec is engaged in the manufacture of electricity. In support of this contention, counsel referred the Tribunal to a decision of the Supreme Court of Canada<sup>2</sup> in which it found that electricity falls within the meaning of “goods” in the relevant provisions of the Act and that the Quebec Hydro-Electric Commission (Hydro-Québec’s predecessor) was a “manufacturer or producer of goods.”<sup>3</sup> Counsel submitted that Bell Canada is also engaged in a manufacturing undertaking. Counsel pointed out that the conception, manufacture and installation of telephone lines and the equipment necessary to operate those lines are essentially a manufacturing operation. In counsel’s words, “[w]hen someone looks into a forest and two years later there is a neighbourhood there, with a completely functional and active phone system in place, that system had to have been built, conceived, manufactured and put in place by Bell Canada.”<sup>4</sup>

Counsel for the respondent first addressed the question of whether or not the appellant is a “manufacturer or producer” under the Act. On this point, counsel referred the Tribunal to subsection 2(1) of the Act which provides, in part, as follows:

2.(1) In this Act,  
“manufacturer or producer” includes

(f) any person who, by himself or through another person acting for him, prepares goods for sale by assembling, blending, mixing, cutting to size, diluting, bottling, packaging or repackaging the goods or by applying coatings or finishes to the goods, other than a person who so prepares goods in a retail store for sale in that store exclusively and directly to consumers. (Emphasis added)

---

2. *Quebec Hydro-Electric Commission v. The Deputy Minister of National Revenue for Customs and Excise*, [1970] S.C.R. 30.

3. *Ibid.* at 32.

4. *Transcript of Public Argument*, March 4, 1997, at 14.

Counsel for the respondent submitted that, in light of its assembly and packaging or repackaging of the safety glasses, the appellant is clearly a manufacturer or producer under paragraph (f) of the definition of “manufacturer or producer.” As such, the appellant’s sales of safety glasses are subject to sales tax under subsection 50(1) of the Act, barring an applicable exemption.

Regarding whether or not the appellant’s sales to Hydro-Québec and Bell Canada were exempt from sales tax, counsel for the respondent submitted that the onus is on the appellant to provide evidence to establish that: (a) those two entities are manufacturers or producers; and (b) the safety glasses purchased by them were for use in the prevention of accidents in the manufacture or production of goods. After reviewing the evidence adduced by the appellant on these points, counsel argued that the appellant simply had not discharged that onus. Counsel submitted that, even if the Tribunal were prepared to accept that Hydro-Québec and/or Bell Canada was a manufacturer or producer, it could not find that those entities had purchased the safety glasses from the appellant “for use ... in the prevention of accidents in the manufacture or production of goods,” as the appellant had failed to introduce any evidence on that issue.

In the Tribunal’s view, it is beyond dispute that, beginning on January 1, 1991, the appellant was a manufacturer or producer of safety glasses pursuant to paragraph (f) of the definition of “manufacturer or producer” under subsection 2(1) of the Act. Mr. Pétrin readily acknowledged that the appellant’s employee “assembles” and “packages” the safety glasses prior to sale. Those activities are expressly enumerated in paragraph (f). The fact that the operation may not add value to the safety glasses is not relevant for purposes of determining whether or not the appellant is a manufacturer or producer.

The appellant being a manufacturer or producer, the sales of the goods that it manufactures and produces would normally be subject to sales tax under subsection 50(1) of the Act. However, in this case, the appellant has claimed that its sales of safety glasses to Hydro-Québec and Bell Canada are exempt from sales tax pursuant to subsection 51(1) and paragraph 1(d) of Part XIII of Schedule III to the Act. In order to fall within the exemption provided for in paragraph 1(d), three conditions must be satisfied. They are that:

- the goods must be safety devices or equipment;
- the goods must be purchased or imported by a manufacturer or producer; and
- the goods must be for use by the manufacturer or producer in the prevention of accidents in the manufacture or production of goods.

With respect to the first condition, the Tribunal is satisfied that the glasses in issue are safety devices or equipment.

With respect to the second condition, the Tribunal is satisfied that Hydro-Québec is a manufacturer or producer within the meaning of the Act. The Tribunal bases this finding on the views expressed by the Supreme Court of Canada in *Quebec Hydro-Electric Commission*. As noted, the Supreme Court of Canada found that electricity falls within the meaning of “goods” in the relevant provisions of the Act and that the Quebec Hydro-Electric Commission was a manufacturer or producer of those goods. The Tribunal notes that the Federal Court of Appeal, in a case dealing with a claim by Hydro-Québec for a sales tax exemption under the Act, applied the Supreme Court of Canada’s decision in *Quebec Hydro-Electric Commission* in finding electricity to be “goods” and Hydro-Québec to be a manufacturer or producer.<sup>5</sup>

---

5. *Deputy Minister of National Revenue for Customs and Excise v. Hydro Quebec*, unreported, [1994] F.C.J. No. 963, June 20, 1994.

Counsel for the appellant submitted that Bell Canada was a manufacturer or producer by virtue of the fact that it “manufactured” or “built” the physical plant necessary to convey telephone calls. When asked in cross-examination what “goods” Bell Canada manufactures or produces, Mr. Pétrin indicated that Bell Canada produced low-voltage electricity.

The Tribunal is not satisfied, on the basis of the evidence adduced by the appellant, that Bell Canada is a manufacturer or producer. It is implicit that anyone wearing safety glasses at a work site does so in order to prevent accidents. However, paragraph 1(d) of Part XIII of Schedule III to the Act provides for a sales tax exemption only when safety glasses are purchased by a manufacturer or producer, not when purchased by a service provider. As the Tribunal is not satisfied that Bell Canada is a manufacturer or producer, it cannot provide the relief that the appellant seeks.

It remains to be determined whether the appellant’s sales to Hydro-Québec satisfy the third condition set out above, specifically, whether the safety glasses were for use by Hydro-Québec in the prevention of accidents in the manufacture or production of goods. Within this third condition, there are two elements: first, whether the safety glasses were for the prevention of accidents; and, second, whether they were to be used in the manufacture of goods.

Regarding the first element, in the Tribunal’s view, it is a reasonable proposition that the safety glasses purchased by Hydro-Québec were purchased to prevent accidents. Safety glasses are specifically designed and used to prevent foreign objects or substances from accidentally entering the wearer’s eyes. Indeed, it is hard to conceive of a purpose, other than the prevention of accidents, for which Hydro-Québec would purchase such glasses.

The Tribunal is also prepared to accept that the safety glasses were purchased by Hydro-Québec to be used in the manufacture of goods, namely, electricity. The exempting provision speaks of goods which are “sold to or imported by manufacturers or producers for use by them in the prevention of accidents in the manufacture or production of goods.” The Tribunal is of the view that the Act contemplates that the question of whether or not the exemption is applicable is to be determined at the time of purchase, not subsequently when the goods are actually being utilized.<sup>6</sup> With respect to certain goods purchased by Hydro-Québec, it would be obvious, at the time of purchase, what the precise use of the goods would be and, therefore, whether or not they would qualify for an exemption. For example, turbines used in the generation of electricity would fall into this category, as they could not be used for any purpose other than the production of electricity.

Safety glasses are not goods of a like kind to turbines, in the sense that, while they always serve the same basic function, they may be utilized in different settings. It must be recalled, however, that Hydro-Québec is only involved in a single commercial undertaking, the production of electricity. On balance, the Tribunal is of the view that it is reasonable to infer that items such as safety glasses or tools or equipment, which, by their nature, are intended to be used in construction, repair or other similar activities, when purchased by an entity such as Hydro-Québec, whose sole or primary activity is the production of a “good,” are purchased for use in producing that “good.”

---

6. *The Deputy Minister of National Revenue for Customs and Excise v. Steel Company of Canada Limited*, unreported, [1983] F.C.J. No. 520, June 13, 1983.

On the basis of the foregoing, the Tribunal is of the view that the appellant's sales of safety glasses to Hydro-Québec during the period from January 1, 1989, to December 31, 1990, were exempt from sales tax. Consequently, the appeal is allowed in part.

Raynald Guay \_\_\_\_\_

Raynald Guay  
Presiding Member

Lyle M. Russell \_\_\_\_\_

Lyle M. Russell  
Member

Charles A. Gracey \_\_\_\_\_

Charles A. Gracey  
Member