



Ottawa, Thursday, February 11, 1993

Appeal No. AP-92-023

IN THE MATTER OF an appeal heard on
November 23, 1992, 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 1, 1992, with respect to a
notice of objection served under section 81.15 of the
Excise Tax Act.

BETWEEN

SCHEEL WINDOW LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Michèle Blouin
Michèle Blouin
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-023

SCHEEL WINDOW LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant is a licensed manufacturer of windows, patio doors and window frames, which it delivers to its customers using vehicles that it owns. The appellant made certain deductions from the sale price of its goods, purportedly relating to transportation costs incurred by the appellant in the course of delivering the goods in issue. These deductions were disallowed in part by the respondent on the basis that the appellant had not properly substantiated its claim to the relevant exemption.

HELD: *The appeal is dismissed. In the Tribunal's opinion, the appellant has not discharged its onus to clearly establish its entitlement to the benefit of the exemption claimed.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 23, 1992
Date of Decision: February 11, 1993

Tribunal Members: Kathleen E. Macmillan, Presiding Member
Sidney A. Fraleigh, Member
Michèle Blouin, Member

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Janet Rumball

Appearances: William Scheel, for the appellant
Frederick Woyiwada, for the respondent

Appeal No. AP-92-023

SCHEEL WINDOW LIMITED

Appellant

and

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Respondent

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member
SIDNEY A. FRALEIGH, Member
MICHÈLE BLOUIN, 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). Scheel Window Limited is a licensed manufacturer of windows, patio doors and window frames, which it delivers to its customers using vehicles that it owns. In remitting sales tax for the period from September 1, 1989, to December 31, 1990, the appellant made certain deductions from the sale price of the goods that it manufactured, purportedly to represent the portion of the sale price relating to its transportation costs. The effect of these deductions was to reduce the appellant's sales tax payable by \$7,044. By notice of assessment dated June 12, 1991, the appellant was assessed unpaid sales tax in the amount of \$3,881.69, representing sales tax payable on the portion of the appellant's transportation cost deductions that the Minister of National Revenue (the Minister) found to be unsubstantiated. By notice of objection dated June 24, 1991, the appellant objected to the assessment. By notice of decision dated April 1, 1992, the Minister disallowed the appellant's objection and confirmed the assessment.

The issue in this appeal is whether the appellant has appropriately substantiated the amount which might be exempt from sales tax as representing the cost of transportation of the goods sold.

The relevant provisions of the Act are found at clause 46(c)(ii)(B), which states that:

For the purpose of determining the consumption or sales tax payable under this Part,

...

(c) in calculating the sale price of goods manufactured or produced in Canada, there may be excluded

...

(ii) under such circumstances as the Governor in Council may, by regulation, prescribe, an amount representing

...

(B) the cost of transportation of the goods incurred by the manufacturer or producer in transporting the goods between premises of the manufacturer or producer in Canada, or in delivering the goods from the premises of the

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

manufacturer or producer in Canada to the purchaser, where the goods are sold at a price that includes those costs of transportation, determined in such manner as the Governor in Council may, by regulation, prescribe.

The relevant provisions of the *Sales Tax Transportation Allowance Regulations*² are as follows:

3. Subject to section 4, for the purpose of determining the consumption or sales tax payable under Part V of the Act on the sale price of goods manufactured or produced in Canada, the amount representing the cost of transportation of the goods that may be excluded under subsection 26(6)³¹ of the Act in calculating the sale price of the goods shall be determined by reference to the invoices, statements, records or books of account of the manufacturer or producer of the goods and in accordance with generally accepted accounting principles.

4.(2) Where goods on which consumption or sales tax is payable under Part V of the Act are transported by a conveyance owned, leased or rented by the manufacturer or producer of the goods, the amount excluded in respect of the cost of that transportation shall include only those costs related to the ownership, leasing or rental and operation of the conveyance, that are allocated to the goods in accordance with generally accepted accounting principles applied on a consistent basis, including

- (a) operating expenses such as licence fees, insurance premiums, fuel costs, oil and grease costs, servicing and repair costs and wages of drivers;*
- (b) depreciation; and*
- (c) rental and lease payments.*

Mr. William Scheel, Vice-President and shareholder of Scheel Window Limited, represented the appellant at the hearing. The company is located in Arnprior, Ontario. It has sales of roughly \$1.5 million annually and employs between seven and twenty people, depending on the season.

Mr. Scheel explained that, in addition to manufacturing windows, the appellant assembles and distributes related products, such as patio doors, garage doors and door frames made by other manufacturers. Roughly 70 percent of its sales are to its network of some 65 dealers; the balance are to final customers. Sales are made as far away as Toronto and Sault Ste. Marie. In argument, Mr. Scheel stated that the appellant delivered all its products and submitted that the appellant's prompt transportation and service were critical to maintaining its competitiveness. This, as submitted in his brief, helps to explain why the appellant's transportation costs are so high in the context of its business.

Mr. Scheel described the methodology that he employed to arrive at the figures used for claiming the transportation deduction. For the five vehicles in relation to which the exclusion was claimed, i.e. two vans, one 5-ton truck, one 1.5-ton truck and one car, actual expenses incurred for insurance, licences, fuel, meals, repairs, interest paid on loans and lease payments were claimed for the period in question.

2. SOR/83-95, January 21, 1983, Canada Gazette Part II, Vol. 117, No. 3, p. 497.

3. Now paragraph 46(c) of the Act.

Certain calculations were required to arrive at the wages associated with the transportation of goods. According to Mr. Scheel, eight employees were involved in the delivery of goods during the period in issue. For some employees, the entire value of their wages was claimed as a transportation deduction. For others, notably for Mr. Scheel, his brother Robert, Ms. Sylvia Hodgins, the sales manager, and Mr. A. Campbell, the company supervisor, only a portion of annual wages was claimed on a prorated basis to approximate the proportion of their time spent in delivery activities. The total amount of wages attributed to transportation activities by this method was \$105,856.

In cross-examination, Mr. Scheel acknowledged that Ms. Hodgins spent a considerable portion of her time in sales, as opposed to delivery functions. Ms. Hodgins was the only driver of one of the vans, which she drove home in the evenings and used on weekends.

Mr. Preston Gallant, presently Acting Audit Unit Manager with the Department of National Revenue (Revenue Canada), appeared as a witness for the respondent. Mr. Gallant was a senior auditor during the period in question and conducted three audits on the appellant, which required visits to the appellant's premises. Mr. Gallant testified that, despite the absence of transportation logs and other supporting documents, most of the appellant's costs entered under the transportation deduction were accepted by Revenue Canada. Certain wages associated with transportation were, however, recalculated. The appellant's claim was disallowed in three areas.

Firstly, Revenue Canada allowed only 50 percent of the costs associated with the van driven by Ms. Hodgins. Secondly, only 50 percent of the costs of the vehicles operated by Mr. William Scheel and Mr. Robert Scheel were allowed. Finally, only 25 percent of Mr. Campbell's salary was permitted as a transportation deduction. The effect of these disallowances was to reduce the transportation charges from \$159,819, as claimed by the appellant, to \$114,867.71. The respondent's determination that there are unpaid amounts of sales tax owing is derived from this difference.

Mr. Gallant also testified that, in the course of his visits to the appellant's premises, he observed neither Mr. William Scheel nor his brother making deliveries. In his opinion, their vehicles were used for the purpose of driving to work and back. Further, neither the supervisor nor Ms. Hodgins appeared to be conducting delivery business.

In argument, counsel for the respondent maintained that the case law establishes that the taxpayer must clearly prove his entitlement to an exemption and substantiate that claim. He submitted that, in the instant case, this has not been done. He added that Revenue Canada had been generous with the appellant in that it had allowed numerous deductions without detailed substantiation.

In making its judgement, the Tribunal notes that the allowance for transportation set out in clause 46(c)(ii)(B) of the Act relates to the delivery of goods from the premises of the manufacturer or producer to the purchaser. It does not include personal use of the vehicle or other business uses, such as sales or promotion. Mr. Scheel acknowledged at the hearing that some of the vehicles in question were used for purposes other than delivery. Consequently, the Tribunal finds that the entire cost of these vehicles, as claimed, should not be allowed to be excluded by the appellant from the sale price of the goods in issue.

Further, in the Tribunal's opinion, the appellant did not discharge its onus to prove that every constituent element necessary to the exemption is present and that it has complied with every condition required by the exempting provision.⁴ In addition to the discussion above, the Tribunal observes that the appellant was unable to provide documentary proof, in the form of log books for example, to substantiate the sizeable transportation claims that it made.

For the foregoing reasons, the appeal is dismissed.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Michèle Blouin
Michèle Blouin
Member

4. *Walter G. Lumbers v. The Minister of National Revenue*, [1943] Ex. C.R. 202, affirmed [1944] S.C.R. 167.