



Ottawa, Tuesday, October 1993

Appeal No. AP-92-076

IN THE MATTER OF an appeal heard on January 25, 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 16, 1992, with respect to a
notice of objection served under section 81.15 of the
Excise Tax Act.

BETWEEN

MODERN WINDOW SHADES LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part. The Tribunal refers the matter back to the Minister of National Revenue for re-audit to adjust the assessment to reflect the actual charges made under the contract where the appellant manufactured goods from the materials supplied by its customers.

Charles A. Gracey
Charles A. Gracey
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-076

MODERN WINDOW SHADES LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issues in this appeal are whether the appellant is liable for the payment of tax in respect of sales which it erroneously believed were exempt from sales tax and whether the appellant is liable for tax in respect of sales for which it only provided the service of sewing drapes or other goods from materials and designs supplied by its customers.

HELD: *With regard to the first issue, the appeal fails, as liability under a taxing statute cannot be avoided through ignorance, inexperience or neglect. As to the second issue, under section 45.1 of the Excise Tax Act, the appellant is liable for tax on the sale price equal to the charge made under the contract in respect of the goods manufactured by the appellant from the materials supplied by its customers. However, the Tribunal refers the matter back to the Minister of National Revenue for re-audit to adjust the assessment to reflect the actual charges made under the contract.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 25, 1993
Date of Decision: October 19, 1993

Tribunal Members: Charles A. Gracey, Presiding Member
W. Roy Hines, Member
Lise Bergeron, Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Dyna Côté

Appearances: Michael Anthony Lewis, for the appellant
Michelle Mann, for the respondent

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MODERN WINDOW SHADES LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
W. ROY HINES, Member
LISE BERGERON, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from an assessment by the Minister of National Revenue for unpaid federal sales tax, plus penalty and interest, covering the period from July 1, 1987, to April 30, 1990. The appellant is in the business of making and installing custom drapes, bedspreads, cushions, etc. The issues in this appeal are whether the appellant is liable for the payment of tax in respect of sales which it erroneously believed were exempt from sales tax and whether the appellant is liable for tax in respect of sales for which it only provided the service of sewing drapes or other goods from materials and designs supplied by its customers.

The latter issue only arose in the course of the hearing before the Tribunal. At that time, it was agreed that the Tribunal would postpone a decision in the present case to enable the appellant to provide written answers and documents in response to written questions from counsel for the respondent with a view to clarifying this issue. The Tribunal bases its decision on both the oral evidence and testimony received at the hearing, and the subsequent written submissions received from the parties.

Mr. Michael Anthony Lewis, President of Modern Window Shades Ltd., appeared as a witness for the appellant. In his original submissions, Mr. Lewis focused on his unfamiliarity with the requirements of the Act and his belief that the appellant's customers were licensed manufacturers and, thus, exempt from paying sales tax. He argued that there was never any attempt to conceal sales or evade taxes and that the appellant should not be subject to this taxation simply because of a lack of understanding the law. If this were the only issue before the Tribunal, the appeal would fail, as liability under a taxing statute cannot be avoided through ignorance, inexperience or neglect.

However, during cross-examination, Mr. Lewis claimed that, in many cases, the appellant only supplied, what he termed, a sewing service in respect of materials and designs that had been provided by its customers. This evidence raised a new issue as to whether these transactions were taxable under Part VI of the Act.

The process of seeking to clarify this latter issue was not satisfactory to the Tribunal. Both the nature of the questions posed by counsel for the respondent and the replies and documentation received from the appellant tended to place the Tribunal in the position of

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

confirming whether the audit carried out by the respondent was accurate. A review of the supplementary data provided did, however, reveal a number of areas where the facts had not been clearly established.

First, the appellant claimed that the last two digits of each amount shown for the transactions listed in the respondent's "Document 1" were recorded by the Department of National Revenue (Revenue Canada) as dollars when, in fact, they were cents. Thus, the values of the purchases from the only two firms on that list that supplied fabric were significantly lower than suggested by the auditor's notes. This matter was not addressed in the respondent's supplementary brief.

Second, counsel for the respondent requested detailed documentation from the appellant concerning its sales activities during and prior to the assessment period and in respect of the 15 transactions listed in "Document 3" of the respondent's request, which formed the basis for the assessment. A considerable amount of material was supplied by the appellant in response to this request, and the Tribunal has tried without success to relate the invoices, cancelled cheques, etc., to the transactions identified by Revenue Canada. However, counsel for the respondent appears to conclude, based on this same documentation, that the appellant only supplied the labour and relatively minor additional components or sewing accessories in making the drapes and other goods in issue. At the same time, while the witness argued that the appellant did not supply the fabric in respect of any of the 15 transactions in "Document 3," and provided references to support his claim, counsel for the respondent argued that the appellant did not clearly establish that the customers supplied the materials used in the production of all the goods in issue. Obviously, there is a need for clarification in this regard, the outcome of which could have an impact on the final assessment in this case.

The second issue before the Tribunal is whether the specific transactions listed in "Document 3" are taxable sales within the meaning of Part VI of the Act, where the goods in issue were manufactured or produced from materials supplied by the customers. In this connection, counsel for the respondent relied on section 45.1 of the Act and argued that these sales are taxable thereunder. Section 45.1 of the Act provides as follows:

45.1 For the purposes of this Part [Part VI], a person who, pursuant to a contract for labour, manufactures or produces goods from any article or material supplied by another person, other than a licensed manufacturer, for delivery to that other person shall be deemed to have sold the goods, at a sale price equal to the charge made under the contract in respect of the goods, at the time they are delivered to that other person.

In the Tribunal's view, whether the fabric was supplied by the appellant or the customers is irrelevant to a decision in this case. As indicated above, in those instances where the fabric was supplied by the appellant, the end product would be subject to tax under subsection 50(1) of the Act. In those other instances where the fabric may have been supplied by the customers, the Tribunal concurs with the submissions of counsel for the respondent that, under section 45.1 of the Act, these transactions are taxable at a sale price equal to the charge made under the contract in respect of the goods. Accordingly, the Tribunal concludes that the appellant is liable for tax on those transactions involving non-licensed manufacturers as customers.

That being said, however, the Tribunal does not believe that the matter can be left without further attention being given to the actual assessment involved. The Tribunal accepts that the onus is on the appellant to prove that an assessment is incorrect and acknowledges that this has not been completely done in this instance. Indeed, at the outset of the hearing, the

appellant did not dispute the figures involved in the assessment. The appellant has, nonetheless, established to the Tribunal's satisfaction that some of the original figures compiled by the auditor were incorrect and that tax should only be levied at a sale price equal to the charge made under the contract in respect of the manufacture of the drapes, bedspreads, cushions, etc., associated with the transactions mentioned in "Document 3." In the circumstances, the Tribunal believes that the original assessment should not stand without a further re-audit by Revenue Canada.

Accordingly, the Tribunal refers this matter back to the Minister of National Revenue for a re-audit.

Charles A. Gracey
Charles A. Gracey
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Lise Bergeron
Lise Bergeron
Member