



Ottawa, Thursday, September 30, 1993

**Appeal No. AP-92-150**

IN THE MATTER OF an appeal heard on February 16, 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 July 3, 1992, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

**BETWEEN**

**JOSEF-RYAN DIAMONDS**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Desmond Hallissey

Desmond Hallissey  
Presiding Member

Michèle Blouin

Michèle Blouin  
Member

Lise Bergeron

Lise Bergeron  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-150**

**JOSEF-RYAN DIAMONDS**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant carries on business as an importer and seller at the wholesale level of loose diamonds and settings for diamonds. The issue in this appeal is whether the appellant is a manufacturer or producer of articles of jewellery and, as such, obligated to remit sales and excise taxes on the sales of those articles.*

**HELD:** *The appeal is dismissed. As the evidence establishes that the transactions at issue involved sales of diamonds mounted on settings by the appellant, the appellant is deemed the manufacturer or producer of articles of jewellery under paragraphs 23(11)(c) and 43(c) of the Excise Tax Act.*

*Place of Hearing: Winnipeg, Manitoba*  
*Date of Hearing: February 16, 1993*  
*Date of Decision: September 30, 1993*

*Tribunal Members: Desmond Hallissey, Presiding Member*  
*Michèle Blouin, Member*  
*Lise Bergeron, Member*

*Counsel for the Tribunal: Gilles B. Legault*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Joel A. Weinstein, for the appellant*  
*Brian Tittmore, for the respondent*

**Appeal No. AP-92-150**

**JOSEF-RYAN DIAMONDS**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL:            DESMOND HALLISSEY, Presiding Member  
                             MICHÈLE BLOUIN, Member  
                             LISE BERGERON, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) from an assessment that was confirmed by the Minister of National Revenue (the Minister).

The appellant, Josef-Ryan Diamonds, carries on business as an importer and seller at the wholesale level of loose diamonds and settings for diamonds. On September 21, 1990, the appellant was assessed in the amount of \$304,959.47, including unpaid sales and excise taxes, interest and penalty. On December 5, 1990, the appellant objected to the assessment and claimed that, with respect to the transactions at issue, it did not sell jewellery, but diamonds that were mounted on settings held by its customers. The assessment was later confirmed by the Minister.

The issue in this appeal is whether the appellant is a manufacturer or producer of articles of jewellery and, as such, obligated to remit sales and excise taxes on the sales of those articles.

At the hearing, the Tribunal heard the testimony of Mr. Jeffrey Shwaid, President of Josef-Ryan Diamonds, the appellant in this case. Mr. Shwaid explained that the appellant sells diamonds to retail stores in Canada. The witness further explained that there are different kinds of sales. For instance, it may sell loose diamonds and settings separately. On other occasions, customers send their diamonds, and the appellant supplies the settings or, conversely, customers supply the settings, and the appellant supplies the diamonds. In cases where it sells both components, the witness testified that the appellant invoices its customers separately and that the diamonds are kept in the appellant's safe in the customer's name. Then, when ready, the appellant supplies the setting and invoices the customers for the setting at that time. This was the case, as the witness testified, especially with respect to sales made to Ben Moss Jewellers, a large customer of the appellant which specifically requested to be charged separately. During cross-examination, the witness testified that, when he received an order for diamonds, he would allocate the diamonds to the purchaser, put them in a bag in the appellant's safe in the customer's name, together with a work order, and would proceed with the mounting once he received the setting. The witness also explained that there would be separate invoices, even though the appellant had, on the premises, the setting and the diamonds, because the mounting takes a few days. The witness finally testified that sales and excise taxes would be remitted on the cost of the diamonds and the settings.

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

Mr. Reg Rutherford, of the Department of National Revenue, also testified at the hearing. Mr. Rutherford performed the audit of the appellant and explained that the purpose of the audit was to verify compliance with the requirement that tax be remitted on the sale price of jewellery where the manufacturer mounts the diamond or precious stones on a setting. The witness explained that, for the period of assessment, Ben Moss Jewellers' purchase orders of diamonds and settings cross-referenced one another. And, as the appellant had three employees on staff at that time who were mounting the product, the witness concluded that the appellant was selling jewellery rather than loose diamonds and settings. The witness explained that the assessment represents the tax calculated on the sale price of the finished article of jewellery and that credit was given with respect to the taxes remitted on the cost of the loose diamonds and settings.

Counsel for the appellant argued that it has paid sales tax with respect to sales of loose diamonds and settings for diamonds. Counsel stated that, according to the testimony of Mr. Shwaid, when a customer purchased loose diamonds, the appellant placed them in an envelope with the customer's name and that the envelope was then secured in the appellant's safe. Counsel relied upon *The Sale of Goods Act*<sup>2</sup> (Manitoba) and argued that the appellant did not manufacture the jewellery, but that it was acting as an agent of its customers when it mounted the diamonds on its customers' settings.

Counsel for the respondent recognized the existence of separate purchase orders for the diamonds and settings, but argued that the appellant's retail purchasers consistently ordered sufficient diamonds and settings on the same days to enable the appellant to create and sell finished articles of jewellery. Moreover, it consistently cross-referenced the separate purchase orders for diamonds and mounting charges to one another. Briefly stated, counsel submitted that the appellant did not remit sales and excise taxes on the final sale price of the jewellery.

The Tribunal is of the view that the evidence in this case is clear. With respect to the transactions at issue, the appellant has sold articles of jewellery. The witness for the respondent has clearly demonstrated how he executed his audit and what transactions are at issue. With respect to these transactions, even Mr. Shwaid during cross-examination testified that the diamonds were mounted on the settings and that the appellant charged the cost of that work, plus an amount for profit, but that taxes, however, were only remitted on the cost of each component rather than on the sale price of the article of jewellery. Although the appellant may have been told by its customers to charge the loose diamonds and settings separately, this could not waive the appellant's liability under the Act. Paragraphs 23(11)(c) and 43(c) of the Act are identical and read as follows:

*Where a person has, in Canada,*

*...*

*(c) set or mounted one or more diamonds or other precious or semi-precious stones, real or imitation, in a ring, brooch or other article of jewellery, he shall, for the purposes of this Part, be deemed to have manufactured or produced the watch, clock, ring, brooch or other article of jewellery in Canada.*

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2. R.S.M. 1987, c. S-10.

Counsel for the appellant argued that the property of the diamonds had passed to the appellant's customers. That may be so. However, in light of the above-mentioned provisions, it has no bearing on this case because, as the appellant mounted the diamonds on the settings, it is deemed to have manufactured or produced the article of jewellery.

Consequently, the appeal is dismissed.

Desmond Hallissey

Desmond Hallissey  
Presiding Member

Michèle Blouin

Michèle Blouin  
Member

Lise Bergeron

Lise Bergeron  
Member