

Ottawa, Friday, June 11, 1993

Appeal No. AP-92-191

IN THE MATTER OF an appeal heard on February 16, 1993, under section 81.22 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF a notice of objection served under section 81.17 of the *Excise Tax Act* with respect to a notice of determination made by the Minister of National Revenue.

BETWEEN

72302 MANITOBA LTD.

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-92-191

72302 MANITOBA LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the goods in issue, postage machines and weigh scales for use thereof, qualify for an exemption of sales tax under subparagraph 1(a)(i) and paragraph 1(l) of Part XIII of Schedule III to the Excise Tax Act, as machinery and apparatus sold to or imported by manufacturers or producers for use by them primarily and directly in the manufacture or production of goods, and parts thereof, respectively, in which case the appellant is entitled to a sales tax refund under section 68.2 of the Excise Tax Act.

***HELD:** The appeal is dismissed. Under section 68.2 of the Excise Tax Act, the appellant must establish that the goods were sold to a purchaser in circumstances that would have rendered the sale to that purchaser exempt or relieved from sales tax under subsection 51(1) of the Excise Tax Act by virtue of the nature of that purchaser or of the use to which the goods are to be put, or by virtue of both such nature and use. There is no evidence before the Tribunal permitting it to conclude that the sales of weigh scales and postage machines were made to manufacturers or producers for use by them primarily and directly in the manufacture or production of goods under subparagraph 1(a)(i) of Part XIII of Schedule III to the Excise Tax Act, and, consequently, the sales cannot be found to have been made in circumstances which would have made them exempt from sales tax as prescribed in section 68.2 of the Excise Tax Act.*

Place of Hearing: Winnipeg, Manitoba

Date of Hearing: February 16, 1993

Date of Decision: June 11, 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: E.R. Reid, for the appellant

Brian Tittlemore, for the respondent

Appeal No. AP-92-191

72302 MANITOBA LTD.

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 81.22 of the *Excise Tax Act*¹ (the Act) from a determination that disallowed a sales tax refund claimed by the appellant.

The appellant is a dealer of office equipment, copiers, fax machines and postage equipment. On May 20, 1991, it applied for a refund of sales tax in the amount of \$3,933.56, which was allowed, in part, on December 2, 1991. On February 17, 1992, the appellant served a notice of objection arguing that sales were made under conditions that would have made them exempt from sales tax and, therefore, that it was entitled to a refund of sales tax under section 68.2 of the Act. The Minister of National Revenue did not make a decision within 180 days after the notice of objection was served and, consequently, the appeal from the determination was then made directly to the Tribunal under section 81.22 of the Act.

The issue in this appeal is whether weigh scales for postage machines qualify for an exemption of sales tax under paragraph 1(l) of Part XIII of Schedule III to the Act, as parts for goods described in subparagraph 1(a)(i), namely, machinery and apparatus sold to or imported by manufacturers or producers for use by them primarily and directly in the manufacture or production of goods, in which case the appellant is entitled to a sales tax refund under section 68.2 of the Act. The Tribunal notes that, at the hearing, the appellant's representative stated that sales of postage machines were also at issue.

The appellant's representative argued that postage machines are production equipment exempted from sales tax under subparagraph 1(a)(i) of Part XIII of Schedule III to the Act, regardless of the fact that the goods are sold to a leasing company that, in turn, rents the equipment to the appellant's customers. He also contended that weigh scales for use with postage machines are parts for goods described in subparagraph 1(a)(i) and, therefore, are exempt from sales tax under paragraph 1(l). He maintained that the equipment in issue produced postage stamps exempt from sales tax under section 19 of Part XI of Schedule III to the Act. The appellant's representative finally submitted that a scale is a necessary component of the equipment used in the production of stamps.

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

Counsel for the respondent argued that the appellant must clearly establish that the goods in issue fall within the exempting provisions. More precisely, the appellant must show that weigh scales are parts of machinery or apparatus used primarily and directly in the manufacture or production of goods and that their use is integral and essential rather than incidental or collateral. Counsel argued, in this regard, that no certificate of exemption nor any documentation to prove the end use of the goods had been presented before the Tribunal. Moreover, certain sales were made to leasing companies which rented the goods to exempt end users and, consequently, these goods were not sold to a manufacturer or producer as prescribed by section 1 of Part XIII of Schedule III to the Act. Furthermore, part of the refund claim incorporates service agreement fees and provincial tax which must not be considered part of the sale price. With respect to the goods in issue, counsel argued that they are not part of goods enumerated in section 1, as they can be used with other goods, and are not connected to a postage meter which imprints stamps on letters and, therefore, are not committed for use with a specific machine. Finally, counsel contended that the weigh scales are office equipment excluded from the exemption under paragraph 1(p) of Part XIII of Schedule III to the Act.

The Tribunal agrees with the first argument made by counsel for the respondent that a person who claims the right of a sales tax exemption under the Act must prove that he or she is entitled to the exemption. That is to say that evidence must be adduced before the Tribunal with respect to the goods for which an exemption is claimed. In the case at hand, the appellant had to establish, in accordance with section 68.2 of the Act, that the goods in issue were sold to purchasers in circumstances that would have rendered the sales exempt or relieved from sales tax under subsection 51(1) of the Act (which exempts from tax goods mentioned in Schedule III) by virtue of the nature of those purchasers or of the use to which the goods are to be put, or by virtue of both such nature and use.

The Tribunal is of the view that the appellant has failed to establish, with respect to the sales of the goods for which it claimed an exemption, which sales, if any, were made in circumstances that would have made them exempt from sales tax. There is indeed no evidence before the Tribunal permitting it to conclude that the sales of weigh scales or postage machines were made to manufacturers or producers for use by them primarily and directly in the manufacture or production of goods under subparagraph 1(a)(i) of Part XIII of Schedule III to the Act and, consequently, the sales cannot be found to have been made in circumstances which would have made them exempt from sales tax as prescribed in section 68.2 of the Act. In light of the foregoing, the appeal is dismissed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Lise Bergeron
Lise Bergeron
Member