

Ottawa, Tuesday, October 19, 1993

Appeal No. AP-92-205

IN THE MATTER OF an appeal heard on April 21, 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 August 14, 1992, with respect to a
notice of objection served under section 81.15 of the
Excise Tax Act.

BETWEEN

LIGHTOLIER, DIVISION OF CANLYTE INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

Desmond Hallissey

Desmond Hallissey
Presiding Member

Michèle Blouin

Michèle Blouin
Member

Lise Bergeron

Lise Bergeron
Member

Michel P. Granger

Michel P. Granger
Secretary

Ottawa, Tuesday, October 19, 1993

Appeal No. AP-92-217

IN THE MATTER OF an appeal heard on April 21, 1993,
under section 81.19 of the *Excise Tax Act*, R.S.C. 1985,
c. E-15;

AND IN THE MATTER OF two decisions of the Minister of
National Revenue dated August 14, 1992, with respect to
two notices of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

LIGHTOLIER, DIVISION OF CANLYTE INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

Desmond Hallissey

Desmond Hallissey
Presiding Member

Michèle Blouin

Michèle Blouin
Member

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Lise Bergeron
Member

Michel P. Granger

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Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-92-205 and AP-92-217

LIGHTOLIER, DIVISION OF CANLYTE INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant manufactures a variety of lighting products, including lighting fixtures with mounting frames which are installed in the ceiling and reflector accessories. The issue in these appeals is whether the mounting frames and reflector accessories sold by the appellant are construction materials within the meaning of section 4 of Part I of Schedule IV to the Excise Tax Act or paragraph 2(f) of the Construction Materials Sales Tax Regulations adopted under section 35 of Part I of Schedule IV to the Excise Tax Act, in which case the goods are subject to the reduced sales tax stipulated in paragraph 50(1.1)(b) of the Excise Tax Act.

HELD: *The appeals are allowed in part. The evidence shows that the mounting frames are usually installed permanently at the time of construction, and the fact that they can be installed after construction of a building, as part of a renovation for example, does not change their character as construction materials. Furthermore, the mounting frames, like electrical wall outlets, are part of a system for the supply of electricity. The reflector accessories, however, serve no purpose in terms of the supply of electricity and are purely aesthetic and functional as far as the diffusion of light is concerned.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: April 21, 1993
Date of Decisions: October 19, 1993*

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

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Dyna Côté

*Appearances: Claude P. Desaulniers, for the appellant
Stephane Lilkoff, for the respondent*

Appeal Nos. AP-92-205 and AP-92-217

LIGHTOLIER, DIVISION OF CANLYTE INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

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

REASONS FOR DECISIONS

These are appeals under section 81.19 of the *Excise Tax Act*¹ (the Act) from three decisions of the Minister of National Revenue confirming a notice of assessment (Appeal No. AP-92-205) and two notices of determination (Appeal No. AP-92-217).

The appellant manufactures and sells to distributors recessed lighting fittings, i.e. mounting frames and accessories. These appeals are made to the Tribunal on the grounds that the sales were made at the regular rate of sales tax rather than at the reduced rate.

In short, the Tribunal must decide whether the mounting frames and reflector accessories for the lighting fixtures sold by the appellant are construction materials designed for permanent installation in a system for the supply of electricity within the meaning of section 4 of Part I of Schedule IV to the Act or paragraph 2(f) of the *Construction Materials Sales Tax Regulations*² (the Regulations) adopted under section 35 of Part I of Schedule IV to the Act, in which case the goods are subject to the reduced rate of sales tax stipulated in paragraph 50(1.1)(b) of the Act.

Mr. Orfallo Lalli, Engineer and Vice-President of Engineering for Lightolier, testified for the appellant as an expert witness in electrical engineering. Mr. Lalli began by describing the Lytecaster mounting frame Model No. 1102 (the most popular model), which is made of steel protected by a coating of zinc and includes some aluminum parts. This model is installed in the ceiling at the time of construction and contains an adapter for the attachment of a lamp, as well as a junction box to which the electrical supply is connected. The box can contain what is known as shunt wiring, which allows the electrical circuit to be used for other mounting frames since it seems that most projects require the installation of several of these frames. The box also insulates the wires in order to prevent electrical shocks. As for the accessories used in conjunction with the lighting fixtures, they are installed once construction is almost complete. Mr. Lalli also described other models of mounting frames similar to the Lytecaster Model No. 1102, in terms of their installation and main components, but which have special features: the Lytecaster Model No. 1102IC, which is surrounded by a metal box protecting the construction materials from excess heat given off by the lamps; the Calculite Model No. FRM 7002 equipped with a heat defecting disc for rapid heat dissipation; the Calculite Model No. FRM 8021, with a ballast for use with fluorescent lights operating on a slightly different voltage; and, lastly, the Calculite Model No. FRM 7027, which incorporates a transformer that permits the use of 12-volt halogen lamps.

1. R.S.C. 1985, c. E-15.
2. C.R.C., c. 587.

In Mr. Lalli's opinion, it is the lamps that constitute the point of electrical consumption with each of the models of mounting frames. According to Mr. Lalli, it is not until the lamps are installed and the circuit closed that it is possible to measure the watts and there is consumption of electricity, which is then transformed into other sources of energy, either heat or light, when it reaches the tungsten filament in the lamp.

Next, Mr. Serge Sabourin, Senior Electrical Engineer for Professional and Technical Services of the Department of Public Works, testified for the respondent as an expert in electrical engineering. Mr. Sabourin expressed the opinion that supply stops at the point at which the electricity enters a building, that is, at the point where electrical consumption is measured. The electricity then goes through the distribution board which, with the circuit breakers, makes it possible to route the electricity safely to various pieces of equipment. Mr. Sabourin drew a parallel with an electrical wall outlet and the plug of a floor lamp, explaining that the junction box of the mounting frames performs the same functions as the plug while eliminating bare wires in the ceiling. Like the plug, the junction box makes it possible to connect dead wires to live wires and, therefore, serves as an intermediary. During cross-examination, Mr. Sabourin explained the distinction between supply, distribution and consumption, supply stopping at the point of entry into the building, at which point distribution begins and then ends at the point of consumption by the electrical device.

Counsel for the appellant argued that the key point of the issue is to determine whether the goods in issue are installed in a system for the supply of electricity within the meaning of the decisions in *Lovell Lighting Ltd. v. The Minister of National Revenue*³ and *Rova Products Canada Inc. v. The Minister of National Revenue*.⁴ Counsel claimed that unlike the decision in *Lovell Lighting*, the goods in issue are not part of a system which consumes electricity because only the bulb consumes it. Counsel submitted that, in the case of the halogen lamps, the transformers merely allow the supply of 110 volts or 120 volts rather than 12 volts and that, in the case of the ballasts for the neon lights, consideration should not be given to their minimum consumption of 20 percent. Lastly, counsel for the appellant stated that, in compliance with *Rova Products*, paragraph 2(f) of the Regulations can apply to goods, even if they are part of a system which consumes electricity, provided that they are also part of a system which supplies electricity as is the case with the mounting frames which supply electricity to an electrical bulb.

Counsel for the respondent stated that the mounting frames are not construction materials and that the exemption provisions at issue contain an exhaustive list of the raw materials and items required in constructing a building or some other construction project. In his opinion, the mounting frames merely make the building more comfortable and provide lighting for a room on the same basis as a floor lamp. Furthermore, they are not used for the construction of buildings nor for making them habitable. According to counsel, mounting frames are part of a system which consumes electricity because the parts of the lighting fixtures in issue interact to produce the light, as shown by some of the models of the mounting frames that are equipped with ballasts or transformers. Indeed, mounting frames and reflector accessories are, within the meaning of *Rova Products*, peripheral equipment of the system for the supply of electricity. Counsel also drew a parallel between, on the one hand, the telephone cords which attach the unit to a wall outlet for the telephone in *Rova Products*, which were not considered to be part of the supply system and, on the other hand, the junction boxes of electrical devices. He argued that the junction boxes of the mounting frames have the same function, in that they

3. Canadian International Trade Tribunal, Appeal No. 2925, June 1, 1989.

4. Canadian International Trade Tribunal, Appeal No. 3107, March 18, 1992.

serve to attach the supply system to the consumption system. Counsel for the respondent concluded by mentioning that the various components of the mounting frames have no supply function, but rather facilitate an efficient, safe and aesthetic installation.

The Tribunal is of the opinion that it is difficult to conclude that Part I of Schedule IV to the Act or the Regulations are exhaustive since these texts are filled with examples using generic terms, apparently, so as not to restrict the exemption to specific construction materials, named or known, provided that their use is in keeping with the nature and purpose of any article contained therein. Moreover, it is clear that these texts do not apply solely to the materials required in constructing a building or making it habitable. It is also evident that these texts do not necessarily exclude relatively useful materials which are used merely for aesthetics or comfort. Section 28 of Part I of Schedule IV to the Act, for example, refers to wood-burning stoves. These items are, therefore, not necessary to the construction of a building and do not necessarily make it habitable in that they could have only an aesthetic or comfort function. In the case before the Tribunal, the evidence shows that the mounting frames are usually installed permanently at the time of construction. The fact that they could be installed after the construction of a building, as part of a renovation for example, does not change their character as construction materials. The Tribunal, therefore, finds that these goods are construction materials for the purposes of the provisions at issue.

It remains to be determined, however, whether the mounting frames are part of a system for the supply of electricity. The Tribunal feels that there is value in reviewing the two decisions rendered by it on which counsel for each of the parties relied. In *Lovell Lighting*, a distinction was made between equipment which alters, regulates and controls the supply of electricity and that which alters, regulates and controls the consumption of electricity. The Tribunal found that a converter consisting of a transformer, a condenser, a starting device, wires and mounting parts, and working with a high pressure sodium (HPS) lamp to produce light, constituted a system for the consumption of electricity. In *Rova Products*, the Tribunal found that the telephone cords were not construction materials, but merely extension cords facilitating the use of a peripheral device, namely, a telephone. While telephone cords also consume electricity, the Tribunal nevertheless concluded that the wall outlets for the telephone were part of a device for the supply of electricity.

In the case at issue, the Tribunal finds that the mounting frames are part of a system for the supply of electricity. The various models of mounting frames are essentially the same devices, with special features for certain models which use transformers, ballasts or heat defecting discs. While some of these features mean that the bulb is not the only device consuming electricity, the resultant *de facto* situation is quite different from that in *Lovell Lighting* which examined a fully integrated system for the consumption of electricity in which converters placed in boxes and mounted on HPS lamps, or installed inside or near their lighting device altered, regulated or controlled the consumption of electricity. The system in itself could, therefore, be considered as the consumer of electricity. This is not the case with the various models of mounting frames in issue with which the vast majority of the consumption is done by the electrical or neon bulb, as the case may be.

The Tribunal also finds a parallel with the wall outlets for the telephone in *Rova Products*. If these outlets are part of a system for the supply of electricity when they are essentially the last point of connection with the supplied device, excluding the cords, it is difficult to imagine how any other interpretation could be applied to the mounting frames. The only distinction made by counsel for the respondent is that the junction box of the mounting frames that is connected to the supply cable plays the same role as the plug of an electrical device connected

to an electrical wall outlet. Consequently, the supply would stop at the connection to the junction box. The Tribunal points out, however, that the expert witness called by the respondent is of the opinion that the supply stops at the point of entry into the building and from that point on, the components are part of the distribution system. Based on *Rova Products*, the Tribunal is rather of the opinion that, in the case of the mounting frames in issue, the supply stops at the junction of the socket with the electrical or neon bulb, as applicable.

Lastly, in spite of the admission of the parties to the effect that the reflector accessories cannot be considered separately from the mounting frames and that the unit represents a whole, the Tribunal is of the opinion that these accessories are neither materials nor hardware designed for permanent installation in a system for the supply of electricity. These accessories are both aesthetic and functional. They can be made of different materials in a variety of colours. They serve to create the desired diffusion of light. In short, the accessories have nothing to do directly with the supply of electricity.

For all these reasons, the Tribunal finds that only the mounting frames sold by the appellant during the period at issue are subject to the reduced rate of sales tax as materials or hardware designed for permanent installation in a system for the supply of electricity under paragraph 2(f) of the Regulations and section 50(1.1)(b) of the Act.

Accordingly, the appeals are allowed in part.

Desmond Hallissey

Desmond Hallissey
Presiding Member

Michèle Blouin

Michèle Blouin
Member

Lise Bergeron

Lise Bergeron
Member