CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, May 6, 1994

Appeal No. AP-93-015

IN THE MATTER OF an appeal heard on November 3, 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 January 22, 1993, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

SKYLINE NEON LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Anthony T. Eyton
Anthony T. Eyton
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-93-015

SKYLINE NEON LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 81.19 of the Excise Tax Act of an assessment of the Minister of National Revenue dated November 5, 1991, that imposed federal sales tax in the amount of $13,283.72 on goods used by the appellant. The appeal before the Tribunal concerns the amount of $4,305.02. The appellant is a licensed manufacturer of illuminated and non-illuminated display signs. It also repairs signs, for example, by replacing facings which have become damaged or faded. The issue in this appeal is whether certain of the appellant's activities constitute production or manufacturing within the meaning of subsection 50(1) of the Excise Tax Act.

HELD: *The appeal is allowed. Relying on certain concessions of counsel for the respondent, the Tribunal allows the appeal with respect to the replacement of plywood facings or the painting of the same message on existing signs. The Tribunal is of the view that the installation of signs and lights on billboards does not constitute production or manufacturing under the Excise Tax Act. It is of the same opinion with respect to the replacement of facings and the painting of the same message on signs. The Tribunal is also of the view that, by changing inward illuminated signs to outward illuminated signs to allow the repainting of a message, the appellant is not producing or manufacturing new signs.*

Place of Hearing:	*Calgary, Alberta*
Date of Hearing:	*November 3, 1993*
Date of Decision:	*May 6, 1994*
Tribunal Members:	*Anthony T. Eyton, Presiding Member* *Sidney A. Fraleigh, Member* *Robert C. Coates, Q.C., Member*
Counsel for the Tribunal:	*Joël J. Robichaud*
Clerk of the Tribunal:	*Anne Jamieson*
Appearances:	*Paul A. White, for the appellant* *Anne M. Turley, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-93-015

SKYLINE NEON LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ANTHONY T. EYTON, Presiding Member
SIDNEY A. FRALEIGH, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) of an assessment of the Minister of National Revenue (the Minister) dated November 5, 1991, that imposed federal sales tax (FST) in the amount of $13,283.72 on goods used by the appellant. The appellant served a notice of objection dated February 24, 1992. The Minister confirmed the assessment in a notice of decision dated January 22, 1993. The appeal before the Tribunal concerns the amount of $4,305.02.

The appellant is a licensed manufacturer of illuminated and non-illuminated display signs. It also repairs signs, for example, by replacing facings, which have become damaged or faded. The issue in this appeal is whether certain of the appellant's activities constitute production or manufacturing within the meaning of subsection 50(1) of the Act.

At the hearing, counsel for the appellant called one witness, Mr. Murray W. Clements, President of Skyline Neon Ltd. Mr. Clements testified that the appellant was retained by Gallop & Gallop Advertising Inc. (Gallop) for the installation of lights on certain billboards. This work was reflected in Invoice Nos. 3552 and 3604. The lights were supplied by the client and installed by the appellant. The appellant was hired by the same company to take down the plastic flex fascia on billboards and to replace it with plywood panels. This work was reflected in Invoice Nos. 3553, 3541 and 3722. Mr. Clements explained that a crane was used to remove the plastic flex fascia from 10 ft. by 20 ft. steel billboard structures. The plastic flex fascia was then rolled and put in storage for the customer. Finally, the plywood panels were installed on the steel structures, and the appellant's work was complete. Someone else would then be responsible for painting the required message on the signs.

During cross-examination, Mr. Clements testified that some of the plywood panels had to be cut before they could be installed. He also said that pieces of steel, which were used as installation brackets to fasten the lights to the structures, sometimes had to be cut. The purpose of this work was to change inward illuminated signs to outward illuminated signs. Most of the materials were supplied by Gallop. The appellant purchased the plywood panels, inclusive of FST. It did not charge FST to its client, as it considered that the goods were part of a service. The appellant was also retained by Gallop to remove plywood fascia. This work was reflected in Invoice No. 4200. The appellant installed signs for the Hudson's Bay Company (the Bay). This work was reflected

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

in Invoice No. 3420. The signs were provided to the appellant by the Bay. The appellant did not perform any work on these signs.

The appellant was also hired to replace broken plexiglass fascia on certain signs. It then painted the same message using the same colours on the new facings. This work was reflected in Invoice Nos. 4306, 0155, 4301, 3427, 3511, 4278, 4269, 4193, 4059 and 4037. In certain instances, the appellant was only asked to clean the fascia and paint the same message. This work was reflected in Invoice No. 3410. It also repaired signs by replacing certain components, such as lamps, or by repairing the wiring. This work was reflected in Invoice No. 3418. As a result of the work done by the appellant, the signs were brought back to their original condition. Again, the appellant paid for the materials, inclusive of FST, and did not charge its customers FST, as it did not consider that it was producing or manufacturing signs.

Counsel for the respondent also called one witness, Mr. Michael A. Gobert, an audit officer with the Department of National Revenue, who performed the audit of the appellant. Mr. Gobert explained how he conducted the audit. It was determined that tax should be remitted by the appellant on the work performed for Gallop because there was a significant or material change in the signs. By replacing or installing a light, the appellant was changing a non-illuminated sign to an illuminated sign. By replacing plastic flex fascia with plywood panels, the appellant was changing an inward illuminated billboard to an outward illuminated billboard capable of receiving a new advertising message. It was also determined that, by replacing broken plexiglass fascia with new materials, for example, a new piece of plastic or a new piece of plywood, the appellant was manufacturing, even though the same message was painted on the sign. However, it was conceded that, where the fascia was not replaced, for example, where it was simply cleaned and the same message was painted on the sign, there should be no assessment of tax.

With respect to the installation of signs for the Bay, Mr. Gobert testified that tax was assessed because of the high value of the work performed, which indicated to him that there must have been some manufacturing work done by the appellant. He also mentioned that, at the time of the audit, Mr. Clements had agreed that it was manufacturing. During cross-examination, Mr. Gobert testified that, in conducting the audit, he did not consider the issue of who had supplied the materials to be relevant.

Counsel for the appellant argued that the installation of signs or lights on billboards or the replacement of plastic flex fascia with plywood panels to change an inward illuminated billboard to an outward illuminated billboard does not constitute production or manufacturing under the Act. Relying on the Federal Court of Appeal decision in *The Minister of National Revenue v. Enseignes Imperial Signs Ltée*,[2] counsel also argued that effecting repairs or renovations to existing signs, which do not change the nature of the signs, but merely restore them to their original condition, does not constitute production or manufacturing under the Act. He argued that, by not creating new messages, the appellant had not produced or manufactured new signs.

Relying on the definition of "manufacturing" given by the Supreme Court of Canada in *Her Majesty the Queen v. York Marble, Tile and Terrazzo Limited*,[3] and referred to by the Federal Court of Appeal in *Enseignes Imperial Signs*, counsel for the respondent argued that the

2. (1990), 116 N.R. 235.
3. [1968] S.C.R. 140.

appellant's activities constituted production or manufacturing under the Act. Counsel argued that, by virtue of any restructuring, the sign acquires new forms, qualities and properties, and manufacturing takes place. She argued that, where the size or the form of illumination has changed, a new product is created, capable of performing a new function, in that it is more widely visible. Similarly, she argued that, where a facing has been replaced because of vandalism or long use, manufacturing takes place even if the same words are painted on the sign.

Counsel for the respondent conceded that the removal of plywood panels or the painting of the same message on the existing fascia does not constitute production or manufacturing under the Act. In making this concession, she was referring to Invoice Nos. 4200 and 3410. Accordingly, the Tribunal allows the appeal with respect to these two invoices.

The Tribunal is of the opinion that the installation by the appellant of customer-supplied signs does not constitute production or manufacturing under the Act. This work does not give the signs new forms, qualities and properties or combinations. It simply constitutes the rendering of a service, for which the appellant is not required to remit any tax. Accordingly, the Tribunal allows the appeal with respect to Invoice No. 3420.

In *Enseignes Imperial Signs*,[4] Enseignes Imperial transformed signs to meet the customer's requirements by reconditioning and repainting the metal part of the sign, by repairing the lighting system, by cleaning the plastic cover or replacing it in the rare cases where this was necessary and, finally, by painting the new advertising message which the customer requested. The Federal Court of Appeal stated that Enseignes Imperial produced signs and that it not only renewed the signs but also transformed them so that they could transmit a new advertising message. Furthermore, the used signs, once transformed, no longer performed the same role; they were new signs. Counsel for Enseignes Imperial argued that, by recycling the used signs, Enseignes Imperial played a role similar to that of a mechanic who resells used cars after repairing and repainting them. The Federal Court of Appeal did not accept this and stated that a car, which a mechanic has repaired and repainted, has exactly the same function as before; it is the same car.

In the present case, the Tribunal is of the opinion that, by replacing broken plexiglass fascia on signs and painting the same message using the same colours on the new facings, or by repairing signs, the appellant is not producing or manufacturing new signs. The repaired or repainted signs have exactly the same function as before. The appellant restores them to their original condition. In contrast with *Enseignes Imperial Signs*, the signs have not been transformed so that they can transmit a new advertising message. Accordingly, the Tribunal allows the appeal with respect to Invoice Nos. 4306, 0155, 4301, 3427, 3511, 4278, 4269, 4193, 4059, 4037 and 3418.

For the same reasons, the Tribunal is of the opinion that, by installing lights on billboards, the appellant is not producing or manufacturing new signs. It is simply restoring the signs to their original condition and allowing them to perform the same function as before. The Tribunal notes that it is mentioned in Invoice No. 3552 that the lights were missing and, in Invoice No. 3604, that the lights which were installed were part of the original sign. Accordingly, the Tribunal allows the appeal with respect to these two invoices.

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4. *Supra*, note 2 at 237-39.

Finally, the Tribunal is of the view that, by replacing plastic flex fascia with plywood panels in order to change inward illuminated billboards to outward illuminated billboards, the appellant is also not producing or manufacturing new signs. Relying on the reasoning in *Enseignes Imperial*, the Tribunal is of the view that the transformed billboards are not performing a function which they could not perform before. Accordingly, the Tribunal allows the appeal with respect to Invoice Nos. 3553, 3541 and 3722.

For all these reasons, the appeal is allowed.

Anthony T. Eyton
Anthony T. Eyton
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member