

Ottawa, Tuesday, January 25, 1994

Appeal No. AP-93-018

IN THE MATTER of an appeal heard on September 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 January 29, 1993, with respect to a  
notice of objection served under section 81.15 of the *Excise  
Tax Act*.

**BETWEEN**

**LES MEUBLES DU SUD LTÉE**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Michèle Blouin  
Michèle Blouin  
Presiding Member

Desmond Hallissey  
Desmond Hallissey  
Member

Lise Bergeron  
Lise Bergeron  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-018**

**LES MEUBLES DU SUD LTÉE**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*Section 45.1 of the Excise Tax Act stipulates that 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, 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. The issue in this appeal is whether the appellant manufactures or produces goods when it saws, planes or sands wood belonging to its clients.*

***HELD:** The appeal is allowed. The provision at issue requires that the goods, which are deemed to have been sold, must be produced or manufactured from articles or materials. This requirement for articles and materials to become goods gives an indication of the degree of processing that is required for the contract for labour to give rise to the application of the deemed sale. The Tribunal finds that the simple operations of sawing, planing and sanding performed by the appellant do not represent sufficient processing to conclude that the articles or materials have become goods. Consequently, the appellant has not manufactured or produced goods within the meaning of section 45.1 of the Excise Tax Act, and the deemed sale cannot apply.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: September 21, 1993  
Date of Decision: January 25, 1994*

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

*Counsel for the Tribunal: Gilles B. Legault*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Norbert Dallaire, for the appellant  
Anik Pelletier, for the respondent*

**Appeal No. AP-93-018**

**LES MEUBLES DU SUD LTÉE**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member  
DESMOND HALLISSEY, 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) of an assessment confirmed, in part, by the Minister of National Revenue.

The appellant primarily manufactures wooden wardrobes, but also saws, planes and sands pieces of wood brought to it by clients. Section 45.1 of the Act stipulates that the 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, shall be deemed to have sold the goods. The Tribunal must determine whether the sawing, planing and sanding of the wood belonging to the appellant's clients constitute the manufacture or production of goods within the meaning of section 45.1 of the Act.

At the hearing, Mr. Norbert Dallaire, President of Les Meubles du Sud Ltée, testified and argued on behalf of the appellant. His precise, open and direct testimony revealed that the appellant's clients bring it pieces of wood from a piece of furniture or a window frame, for example, so that they can be cut, planed or sanded. In 95 percent of the cases, the wood is used. Mr. Dallaire described these operations as simple services provided to clients by a company that primarily manufactures wooden wardrobes.

Counsel for the respondent, relying on *The Queen v. York Marble, Tile and Terrazzo Limited*,<sup>2</sup> claimed that the appellant gave new properties, forms or qualities to the wood belonging to its clients and, consequently, that it had manufactured or produced goods within the meaning of section 45.1 of the Act. She also claimed that, in keeping with *The Minister of National Revenue v. Enseignes Imperial Signs Ltée*,<sup>3</sup> the production of goods can result from a very simple operation.<sup>4</sup>

In its analysis, the Tribunal notes, first, that section 45.1 of the Act, as indicated in its marginal note, establishes a deemed sale. Thus, the Act deems that a simple contract for labour with respect to an article or material not belonging to the appellant becomes a taxable sale of

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

2. [1968] S.C.R. 140.

3. Federal Court of Appeal, unreported judgment, February 28, 1990, File No. A-264-89.

4. *Ibid.* at 4.

goods. It goes without saying that, for the operations performed by the appellant to be subject to tax, all of the conditions for the application of section 45.1 of the Act, especially that there be manufacturing or production, must be clearly fulfilled.

The Tribunal does not question the cases raised by counsel for the respondent in support of her arguments. However, it notes that it must first rely on the wording of the provision itself in seeking to determine the intent of the legislator. Thus, under a contract for labour, a sale is deemed to have been made, provided goods are produced or manufactured from articles or materials. This requirement for articles or materials to become goods gives an indication as to the degree of processing required for the contract for labour to result in the application of the deemed sale. The Tribunal is convinced, on the basis of the few examples provided by Mr. Dallaire, that the simple sawing, planing and sanding operations performed by the appellant do not represent the degree of processing needed to conclude that the articles or materials have become goods. The appellant did not, therefore, manufacture or produce goods within the meaning of section 45.1 of the Act, and the deemed sale cannot apply.

For the foregoing reasons, the appeal is allowed.

Michèle Blouin  
Michèle Blouin  
Presiding Member

Desmond Hallissey  
Desmond Hallissey  
Member

Lise Bergeron  
Lise Bergeron  
Member