



Ottawa, Friday, February 11, 2000

**Appeal No. AP-94-101**

IN THE MATTER OF an appeal heard on October 21, 1999,  
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 March 25, 1994, with respect to a notice  
of objection served under section 81.15 of the *Excise Tax Act*.

**BETWEEN**

**KHONG ISLAND JEWELLER LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Patricia M. Close  
Patricia M. Close  
Member

Peter F. Thalheimer  
Peter F. Thalheimer  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-94-101**

**KHONG ISLAND JEWELLER LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal under section 81.19 of the *Excise Tax Act* from an assessment that was confirmed by the Minister of National Revenue. The appellant carried on a business where it manufactured, wholesaled and retailed items of gold jewellery. The issue in this appeal is whether the appellant is obligated to remit sales and excise taxes on the gold used in the manufacture of the jewellery.

**HELD:** The appeal is dismissed. The Tribunal is of the view that the transactions at issue involved sales of custom-manufactured items of gold jewellery by the appellant and that the appellant is liable under the *Excise Tax Act* to remit sales and excise taxes on the gold used to manufacture the jewellery.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: October 21, 1999  
Date of Decision: February 11, 2000

Tribunal Members: Pierre Gosselin, Presiding Member  
Patricia M. Close, Member  
Peter F. Thalheimer, Member

Counsel for the Tribunal: Marie-France Dagenais

Clerk of the Tribunal: Anne Turcotte

Parties: Chansame Louangxay, for the appellant  
Anne Michaud, for the respondent

**Appeal No. AP-94-101**

**KHONG ISLAND JEWELLER LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member  
PATRICIA M. CLOSE, Member  
PETER F. THALHEIMER, Member

**REASONS FOR DECISION**

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

The appellant carried on a business where it manufactured, wholesaled and retailed items of gold jewellery. On June 15, 1993, the appellant was assessed in the amount of \$50,680.74, including unpaid sales and excise taxes, interest and penalty, on gold used in the manufacture of jewellery. On September 17, 1993, the appellant objected to the assessment. It claimed that the sale of gold is not subject to either federal sales tax or excise tax. The assessment was later confirmed by the respondent. On September 25, 1999, the Tribunal published a notice in the *Canada Gazette* advising the parties that it would conduct a hearing of the appeal by way of a file hearing, on October 21, 1999. In accordance with rule 25 of the *Canadian International Trade Tribunal Rules*,<sup>2</sup> the Tribunal proceeded to dispose of the matter on the basis of the written documents before it.

The issue in this appeal is whether the appellant is obligated to remit sales and excise taxes on the gold used in the manufacture of the jewellery.

In the material filed with the Tribunal, the appellant claimed that, with respect to some of the transactions at issue, it did not have to purchase gold since it was provided by its customers. The appellant submitted that its only obligations were to give advice on selecting a suitable design and provide the skill and labour to do the actual manufacture. The appellant further claimed that, with respect to the other transactions at issue, it acted as an agent for its customers when it purchased the gold. In those instances, the appellant submitted that it issued separate invoices to its customers covering the exact purchase price of the required gold without any mark up or service charge.

The respondent recognized the existence of separate invoices, but confirmed the assessment by concluding that the fact that the appellant invoiced the customer separately for the cost of gold and for services did not alter the true nature of the transaction, which was the sale of a custom-manufactured item of gold jewellery. He further submitted that the appellant is liable to pay sales and excise taxes on the final sale price of the item of jewellery to the customer, which includes the price of the gold used in making the piece of jewellery.

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1. R.S.C. 1985, c. E-15 [hereinafter *Act*].  
2. S.O.R./91-499.

Paragraph 50(1)(a) of the *Act* provides that sales tax is imposed on the sale price of all goods manufactured in Canada. By virtue of subsection 23(1) of the *Act* and paragraph 5(c) of Schedule I to the *Act*, excise tax is imposed in respect of jewellery manufactured in Canada. The term “sale price” is defined in sections 22 and 42 of the *Act* and includes “any amount that the purchaser is liable to pay to the vendor by reason of or in respect of the sale”.

The Tribunal is of the view that the appellant sold custom-manufactured items of gold jewellery. The cost of gold must be included in the sale price of the custom-made jewellery. Although the appellant may have invoiced the cost of gold and the actual manufacture separately, this could not waive the appellant’s liability under the *Act*.

Consequently, the appeal is dismissed.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Patricia M. Close  
Patricia M. Close  
Member

Peter F. Thalheimer  
Peter F. Thalheimer  
Member