

Ottawa, Friday, April 12, 1996

Appeal No. AP-95-051

IN THE MATTER OF an appeal heard on October 31, 1995,
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 2, 1995, with respect to a notice of
objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

GROUPE UNIMÉDIA INC., DIVISION LITHO PRESTIGE

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Lise Bergeron
Lise Bergeron
Presiding Member

Raynald Guay
Raynald Guay
Member

Anita Szlazak
Anita Szlazak
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-051

GROUPE UNIMÉDIA INC., DIVISION LITHO PRESTIGE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act of a determination that rejected an application for refund of federal sales tax in the amount of \$300,195.59. The issue in this appeal is whether the appellant is entitled to a refund of federal sales tax paid on the schedules accompanying the tax tables for individual income tax returns. More specifically, the Tribunal must determine whether the goods in issue are “printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes” under paragraph 3(1)(a) of Part III of Schedule III to the Excise Tax Act.

DECISION: *The appeal is allowed. The Tribunal is of the opinion that the goods in issue are actually assemblies of printed pages brought together in bound or stapled volumes. They also contain symbols that are intended to be read. The goods in issue are, therefore, books. In addition, they contain no advertising. The Tribunal is of the opinion that the information in the schedules accompanying the tax tables is more descriptive or informative in character than educational. According to the Tribunal, the goods in issue are, therefore, not for educational purposes. The Tribunal is, however, of the view that they are “solely for ... technical ... purposes.” The Tribunal, therefore, concludes that the goods in issue are covered by the exemption provisions of paragraph 3(1)(a) of Part III of Schedule III to the Excise Tax Act.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: October 31, 1995
Date of Decision: April 12, 1996

Tribunal Members: Lise Bergeron, Presiding Member
Raynald Guay, Member
Anita Szlczak, Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Anne Jamieson

Appearances: Maurice Arsenault, for the appellant
Stéphane Lilkoff, for the respondent

Appeal No. AP-95-051

GROUPE UNIMÉDIA INC., DIVISION LITHO PRESTIGE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LISE BERGERON, Presiding Member
RAYNALD GUAY, Member
ANITA SZLAZAK, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of a determination that rejected an application for refund of federal sales tax (FST) in the amount of \$300,195.59.

The appellant works in the printing sector. The appellant sold to the Department of National Revenue (Revenue Canada) guides, individual income tax returns and the schedules accompanying the tax tables for individual income tax returns. In an application dated August 26, 1991, the appellant claimed, under section 68 of the Act, a refund of \$553,037.24 to recover FST paid in error on those products. On January 28, 1992, the appellant filed a second refund application in the amount of \$300,195.59 to recover the amount due on the schedules accompanying the tax tables for individual income tax returns. On February 12, 1992, the first refund application was accepted in part. The tax guides qualified for the refund, while the refund application relating to the schedules accompanying the tax tables was rejected because these are “books for writing or drawing on, ... any other similar printed matter.” On March 17, 1992, the second refund application was also rejected. On June 5, 1992, a notice of objection to that determination was served. On March 2, 1995, a decision was made. The objection was disallowed, and the determination was confirmed.

The issue in this appeal is whether the appellant is entitled to a refund of FST paid on the schedules accompanying the tax tables for individual income tax returns.

Section 3 of Part III of Schedule III to the Act provides an exemption for the following goods:

3. (1) The following printed matter, articles and materials:

(a) college and school annuals; unbound literary papers regularly issued at stated intervals not less frequently than four times yearly; sheet music; manuscripts; national manufacturing, industrial or trade directories; printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes; articles and materials for use exclusively in the manufacture or production of the foregoing; ...

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

but excluding albums, biographical, financial or statistical surveys and reports, books for writing or drawing on, catalogues, colouring books, directories of all kinds not mentioned in this section, fashion books, guide books, periodic reports, price lists, rate books, timetables, year books, any other similar printed matter and any printed matter or part thereof or class of printed matter as may be designated by the Governor in Council.

The appellant's representative maintained that the goods in issue are "printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes." According to the representative, a printed document must meet four conditions to be exempted: it must be a book; the book must contain no advertising; it must be solely for educational, technical, cultural or literary purposes; and, the book must not be covered by the specific exclusions at the end of section 3 of Part III of Schedule III to the Act. The representative emphasized that the second condition should not present a problem. With regard to the first condition, the representative referred to several definitions of the French word "livre" (book), among others, the following definition in the *Petit Larousse illustré*: "[a]ssemblage de feuilles imprimées et réunies en un volume relié ou broché²" ([translation] assembly of printed pages brought together in a bound or stapled volume). Based on that definition, the representative contended that the goods in issue are actually books. Referring to the Tribunal's decision in *Government of Ontario, Ministry of Transportation v. The Minister of National Revenue*,³ he maintained that the fact that the goods in issue are removed from the guide, which is considered to be a book⁴ by Revenue Canada, and are bound separately does not change the nature of the documents. According to the representative, the goods in issue must also be considered as books. In addition, even though the goods in issue are produced separately, they form a whole with the other parts of the document because the taxpayer needs the guide to complete the schedules, and vice versa.

With regard to the third condition, the appellant's representative maintained that the goods in issue are for educational and technical purposes because their primary objective is to provide taxpayers with information and explanations to assist them in completing their tax returns. To support his argument, he referred to the Tariff Board's decision in *Perly's Maps Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*⁵ and the following definition of the word "technical" in *The Oxford English Dictionary* to which the Tariff Board referred: "2. Of a thing: Skillfully done or made: ... 3. a. Belonging or relating to an art or arts; appropriate or peculiar to, or characteristic of, a particular art, science, profession, or occupation."⁶ Based on that definition, the Tariff board concluded that "the goods in issue, urban atlases, are printed books that are designed and published for technical purposes in the sense of providing precise technical means for persons to readily locate specific locations of places in a given geographical area in the pursuit of their occupations and their commercial or professional duties."⁷ The representative, therefore, stressed that taxation and, consequently, the goods in issue are technical. They provide guidance to taxpayers in the speedy calculation and identification of the tax due to the government.

2. (Paris: Larousse, 1988) at 585.

3. Appeal No. AP-90-106, September 13, 1991.

4. See Ruling 5740/70-1.

5. (1986), 11 T.B.R. 236.

6. Second ed. (Oxford: Clarendon Press, 1989) at 703.

7. *Supra*, note 5 at 250.

With regard to the fourth condition, the appellant's representative contended that the goods in issue are not books on which to write or draw. Referring to the Tariff Board's decision in *Master Media Inc. v. The Deputy Minister of National Revenue for Customs and Excise*,⁸ he alleged that the primary purpose of the publication must be considered in order to determine its usefulness in terms of the Act. According to the representative, the spaces provided on which to write are only accessories to the primary purpose of the goods in issue. He also referred to Revenue Canada Ruling 5740/103-1 Passive,⁹ in which it was decided that pamphlets for employee surveys containing about 50 questions and a series of boxes qualified for the exemption under section 3 of Part III of Schedule III to the Act. The fact that boxes are provided so that employees can check off their answers was considered of secondary importance when compared to the overall character of the pamphlets. Finally, the representative referred to Revenue Canada Ruling 5740/84.¹⁰ The publications covered by that ruling were test books containing spaces on which to write. These publications were exempt from FST because they were of an educational nature and were not principally designed for writing.

Counsel for the respondent contended that the goods in issue must be considered separately at the time of their sale. He emphasized that the schedules are "books for writing ... on" or "other similar printed matter" and that the tax tables are "rate books" or "other similar printed matter." As a result, the goods in issue are not part of the goods exempted from FST under section 3 of Part III of Schedule III to the Act. Counsel maintained that the appellant's position, according to which the goods in issue are "printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes" is not founded in fact and in law. Referring to the decision of the Federal Court of Appeal in *Maclean Hunter Limited v. The Deputy Minister of National Revenue for Customs and Excise*,¹¹ counsel maintained that the goods in issue are not for educational purposes, since they are not intended for learning purposes, as they were not teaching materials. In addition, they do not either prepare for life in general or for a trade or describe or explain the *Income Tax Act*. They only reproduce this act or its regulations in tables. There is no explanation on how to complete the schedules or use the tables. Referring to *Maclean Hunter*, as well as to *Southam Business Information and Communications Group Inc. v. The Minister of National Revenue*¹² and to *Canadian Turbo (1993) Ltd. v. Her Majesty the Queen*,¹³ counsel contended that the goods in issue are not for technical purposes, since they did not relate to machines or an exact science. According to counsel, taxation is not a pure science like, for example, engineering.

Counsel for the respondent emphasized that the interpretations of the Minister of National Revenue are only administrative rulings that are not determinative and that the Tribunal must refer to them only in the event of doubt about the meaning of the Act. He maintained that Revenue Canada Ruling 5740/70-1¹⁴ is not relevant, since the goods in issue are not intended to provide information and a better understanding to individuals who have to complete their income tax returns. In addition, the schedules accompanying the tax

8. (1982), 8 T.B.R. 140.

9. Employee Survey Questionnaire, April 14, 1987. This ruling card was transferred to passive effective January 1, 1991, because of the Goods and Services Tax.

10. Printed Books, February 13, 1984

11. 88 D.T.C. 6096, Court File No. A-336-86, January 21, 1988.

12. Canadian International Trade Tribunal, Appeal No. 2312, March 27, 1991.

13. Unreported, Federal Court - Trial Division, Court File No. T-1609-93, May 18, 1995.

14. General Tax Guide and Return, May 25, 1989.

tables are sold separately from the income tax returns and the guide. Counsel maintained that Rulings 5740/103-1 and 5740/84 are not relevant to the purposes of this appeal, given the nature of the goods in issue.

Subsection 51(1) of the Act provides that FST imposed under section 50 does not apply to the sale or importation of the goods mentioned in Schedule III. Section 3 of Part III of Schedule III to the Act provides an exemption for “books that contain no advertising and are solely for educational, technical, cultural or literary purposes,” but excluding “books for writing or drawing on.”

Based on the decision of the Exchequer Court of Canada in *W.T. Hawkins Limited v. The Deputy Minister of National Revenue for Customs and Excise*,¹⁵ the Tribunal is of the opinion that it must consider the goods in issue separately. In other words, it must determine whether the schedules accompanying the tax tables qualify for an FST refund when sold separately by the appellant. The goods in issue are, therefore, the schedules accompanying the tax tables for individual income tax returns. They must not be considered as forming part of a whole.

The Tribunal agrees with the appellant’s representative and counsel for the respondent in saying that the goods in issue must meet a number of conditions to qualify for an FST refund under section 3 of Part III of Schedule III to the Act. First, the goods in issue must be considered as books. The French word “*livre*” (book) is not defined in the Act nor in the schedules. The *Petit Larousse illustré* defines the word “*livre*” as an “[a]ssemblage de feuilles imprimées et réunies en un volume relié ou broché¹⁶” ([translation] assembly of printed pages brought together in a bound or stapled volume). The *Petit Robert*¹⁷ defines the word “*livre*” as an “[a]ssemblage d’un assez grand nombre de feuilles portant des signes destinés à être lus” ([translation] assembly of a fairly large number of pages bearing symbols that are intended to be read). The Tribunal is of the view that the goods in issue are actually assemblies of printed pages brought together in bound or stapled volumes. They also contain symbols that are intended to be read. The goods in issue are, therefore, books. In addition, they contain no advertising.

The third condition provides that the books must be solely for educational, technical, cultural or literary purposes. It is clear that the goods in issue are not for cultural or literary purposes. The Tribunal must, therefore, determine whether the schedules accompanying the tax tables are for educational or technical purposes in terms of the Act and whether they qualify for an FST refund. Referring to the decision of the Federal Court of Appeal in *Maclean Hunter*, counsel for the respondent contended that the goods in issue are not for educational or technical purposes. In that decision, the Court ruled that the term “educational” in section 3 of Part III of Schedule III to the Act refers to “a fundamental process of learning which is aimed at preparing either for life in general or for a large purpose such as a particular profession or trade, and is in any event without an immediately utilitarian focus.” As in *Southam*, the Tribunal accepts the interpretation of the Federal Court and judges that it applies in this case. In *Southam*, the Tribunal had to decide whether an almanac containing facts and information about Canada should be considered as a publication exempted from payment of FST based on the fact that it was “solely for educational, technical,

15. [1958] Ex. C.R. 152.

16. (Paris: Larousse, 1988) at 585.

17. (Montréal: Les Dictionnaires ROBERT - CANADA S.C.C., 1990) at 1104.

cultural or literary purposes” in accordance with paragraph 3(a) of Part III of Schedule III to the Act. The Tribunal decided as follows:

Although it can be said that all of life’s experiences are educational in some sense, it is clear that the legislator did not intend to confer such a broad meaning to the phrase, “solely for educational purposes.” Rather, in the Tribunal’s view, the legislator intended to exempt books that are used in a more or less formal educational setting and that follow some curriculum, such as textbooks on mathematics or history. The Tribunal considers the material contained in the Almanac to be more in the nature of information than as material intended for educational purposes.¹⁸

In this case, the Tribunal is of the same opinion. The Tribunal believes that the information in the schedules accompanying the tax tables is more descriptive or informative in character than educational. In the Tribunal’s view, the goods in issue are not, therefore, for educational purposes. It must now determine whether they are for technical purposes.

In *Maclean Hunter*, the Court ruled that the term “technical” “must be taken narrowly, to refer to matter having to do with the mechanical arts or the applied sciences.¹⁹” In this case, the evidence showed that the goods in issue deal with taxation. The expression “applied sciences” is translated in the Collins•Robert French-English English-French Dictionary as follows: “*sciences appliquées*.²⁰” This expression is defined in Le Grand Robert de la Langue Française in the following way: “*au service de la technique* (opposé à sciences fondamentales* ou à sciences pures). Sciences pour l’ingénieur²¹*” ([translation] For technical purposes [as opposed to the fundamental or pure sciences]. Sciences for the engineer). The French word “*technique*” (technical) is defined in the Petit Robert 1 as follows: “[*q*]ui appartient à un domaine particulier, spécialisé, de l’activité ou de la connaissance ... [*q*]ui concerne les applications de la connaissance théorique, dans le domaine de la production et l’économie²²” ([translation] belonging to a specific, specialized field of activity or knowledge ... which involves the application of theoretical knowledge in the fields of production and economics). Based on these definitions, the Tribunal is of the opinion that taxation may be considered as an applied science. The goods in issue are, therefore, for technical purposes. The Tribunal is of the view that the fact that there are boxes to be checked off by the taxpayer in the schedules does not prevent these from being considered “solely” for technical purposes under section 3 of Part III of Schedule III to the Act, since these boxes may be considered secondary to the nature of the goods in issue. In support of this conclusion, the Tribunal refers to the Tariff Board’s decision in *Master Media*. Finally, the Tribunal is of the opinion that the goods in issue are much more than simply books on which to write.

18. *Supra*, note 12 at 5.

19. *Supra*, note 11.

20. Second ed. (Glasgow: Collins Publishers, 1988) at 26.

21. Second ed. (Montréal: Les Dictionnaires ROBERT - CANADA S.C.C., 1987) at 636.

22. *Supra*, note 17 at 1931.

Consequently, the appeal is allowed. The Tribunal concludes that the goods in issue are covered by the exemption provisions of paragraph 3(a) of Part III of Schedule III to the Act.

Lise Bergeron
Lise Bergeron
Presiding Member

Raynald Guay
Raynald Guay
Member

Anita Szlajak
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Member