

Ottawa, Monday, November 27, 1989

Appeal No. 2555

IN THE MATTER OF an application heard November 9, 1989, pursuant to section 59 of the *Excise Tax Act*, R.S.C. 1970, c. E-13;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated February 12, 1986, with respect to an application filed pursuant to section 44 of the *Excise Tax Act*.

BETWEEN

PITNEY BOWES OF CANADA LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed. The Tribunal declares that postage meter machines bearing model numbers 5319, 5384, 5385, 5397 and 5717, which were the subject of a refund claim filed by the appellant dated November 29, 1985, are exempt from federal sales tax pursuant to subsection 29(1) and subparagraph 1(a)(i), Part XIII, Schedule III of the *Excise Tax Act*.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

John C. Coleman
John C. Coleman
Member

Kathleen Macmillan
Kathleen Macmillan
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 2555

PITNEY BOWES OF CANADA LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Excise Tax Act - Whether postage meter machines are used in the production of postage stamps and thus federal sales tax exempt pursuant to paragraph 1(a), Part XIII, Schedule III of the Excise Tax Act (the exemption clause) or whether the postage meter machines are office equipment and thus liable to federal sales tax in accordance with paragraph 1(p), Part XIII, Schedule III of the Excise Tax Act.

DECISION: *The appeal is allowed. The issue and the postage meter machines before this Tribunal were also considered by the Trial Division of the Federal Court of Canada (the Court). The Court concluded that the machines came within the exemption clause and thus were sales tax exempt. Both parties now ask the Tribunal to classify the postage meter machines before the Tribunal under the exemption clause. As the issue and the goods before this Tribunal and the Court are the same, the Tribunal, concurring with both parties, concludes that the postage meter machines in issue before this Tribunal come within the exemption clause.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 9, 1989
Date of Decision: November 27, 1989

Panel Members: Robert J. Bertrand, Q.C., Presiding Member
John C. Coleman, Member
Kathleen Macmillan, Member

Counsel for the Tribunal: Clifford Sosnow
Clerk of the Tribunal: Janet Rumball

Cases Cited: *Pitney Bowes of Canada Ltd. v. Her Majesty the Queen (T-1424-87).*

Statutes and Regulations Cited: *Canadian International Trade Tribunal Act, S.C. 1988, c. 56, subs. 54(2) and s. 60; Excise Tax Act, R.S.C. 1970 c. E-13, section 1, and paragraph 1(p), Part XIII, Schedule III of the Excise Tax Act.*

Appeal No. 2555

PITNEY BOWES OF CANADA LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding Member
JOHN COLEMAN, Member
KATHLEEN MACMILLAN, Member

REASONS FOR DECISION

INTRODUCTION

This appeal concerns postage meter machines and whether they come within subparagraph 1(a)(i), Part XIII, Schedule III of the *Excise Tax Act*¹ (the Act) as machinery used in the production of goods (eg. postage stamps). The appellant filed two separate refund claims regarding the postage meter machines covering two different periods. One claim was filed on November 29, 1985, and the second claim was filed on February 27, 1986. Both claims were disallowed by the Minister of National Revenue because the machines were considered to be office equipment under paragraph 1(p), Part XIII, Schedule III of the Act - a clause requiring the payment of federal sales tax. The earlier claim was originally appealed to the Tariff Board but was adjourned pending the resolution of the second claim which was appealed to the Court. The Court, dealing with the same goods and the same issue as before the Tariff Board, concluded that the postage meter machines came within subparagraph 1(a)(i), Part XIII, Schedule III of the Act (the exemption clause). Both parties now ask the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 54(2) and section 60 of the *Canadian International Trade Tribunal Act*² to classify the postage meter machines, which were the subject of the November 1985 refund claim, under the exemption clause.

In responding to the request, the Tribunal published a notice in Part I of the Canada Gazette of October 7, 1989, to the effect that any party wishing to intervene in the appeal must notify the Tribunal of its intention to do so no later than October 20, 1989, and that if no interventions were filed by that date, the appeal would be determined without an oral hearing.

1. R.S.C. 1970, c. E-13; now R.S.C. 1985, c. E-15.

2. S.C. 1988, c. 56.

The Tribunal has not received any notices of intention to intervene, neither before nor after the October 20, 1989, deadline and, therefore, deals with this appeal on the basis of the material contained on the record.

The issue before this Tribunal is whether the machines that are the subject of the November 1985 refund claim also come within the exemption clause.

DECISION

The issue before this Tribunal is the same issue that was considered by the Court in ruling on the second refund claim filed by the appellant. In the case before the Court, Mr. Justice Muldoon stated that the postage meter machines in issue before the Court could not be considered office equipment for the following reasons:

... The postage meter machines upon whose leasing the Minister of National Revenue would impose sales or consumption tax levied in Section 29 of the Excise Tax Act are exempted from such tax pursuant to Section 1(a)(i) of Part XIII of Schedule III of the Act.

The use and history of the term "office equipment" or "materiel de bureau" convince the Court that it is not applicable to the postage meter machines which are leased to Pitney Bowes customers.³

The sworn affidavit of Mr. David R. Wilkinson, Chartered Accountant and Director of Taxation for the appellant, that the postage meter machines in issue before the Court are identical to the postage meter machines before this Tribunal and the respondent's agreement with this statement convince the Tribunal - there being no evidence to suggest the contrary -that the machines that are the subject of the November 1985 claim are the same as those under consideration by the Court.

As the issue and the goods before this Tribunal and the Court are the same, the Tribunal, concurring with both parties, concludes that the postage meter machines covered in the November 1985 refund claim come within the exemption clause.

3. Pitney Bowes of Canada Ltd. v. Her Majesty the Queen (T-1424-87).

CONCLUSION

In view of the foregoing, the Tribunal considers that postage meter machines bearing model numbers 5319, 5384, 5385, 5397 and 5717 which were the subject of a refund claim filed by the appellant dated November 29, 1985, are exempt from federal sales tax pursuant to subsection 29(1) and subparagraph 1(a)(i), Part XIII, Schedule III of the Act.

Accordingly, the appeal is allowed.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

John C. Coleman
John C. Coleman
Member

Kathleen Macmillan
Kathleen Macmillan
Member