



Ottawa, Tuesday, December 12, 1989

Appeal No. 2845

IN THE MATTER OF an application heard May 19, 1989, pursuant to section 51.19 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 July 10, 1987, with respect to a notice of objection filed pursuant to section 51.17 of the *Excise Tax Act*.

BETWEEN

CAN TRAFFIC SERVICES LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal declares that the sign bridge assemblies installed by the appellant at the Crowsnest Trail Corridor for the city of Lethbridge, Alberta, are not bridges within the meaning of paragraph 1(h), Part XII, Schedule III of the *Excise Tax Act*.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Member

W. Roy Hines

W. Roy Hines
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 2845

CAN TRAFFIC SERVICES LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Excise Tax Act - Whether sign bridge assemblies are bridges within the meaning of paragraph 1(h), Part XII, Schedule III of the Excise Tax Act.

DECISION: *The appeal is dismissed. The word "bridge" must be interpreted according to its common and ordinary meaning. According to this meaning, a bridge must span an obstruction and afford passage to people and/or things. The sign bridge assemblies do not afford passage nor conveyance.*

Place of Hearing: Calgary, Alberta
Date of Hearing: May 19, 1989
Date of Decision: December 12, 1989

Panel Members: Sidney A. Fraleigh, Presiding Member
Robert J. Bertrand, Q.C., Member
W. Roy Hines, Member

Counsel for the Tribunal: Clifford Sosnow
Clerk of the Tribunal: Lillian Pharand

Appearances: Douglas Densmore, for the appellant
Peter C. Engelmann, for the respondent

Statutes 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, paragraph 1(h), Part XII, Schedule III.*

Cases Cited: *City of Chicago v. Pittsburgh, Ft. W. & C. R. Co. (1910), 93 N.E. 307; Hunt Foods Export Corp. of Canada Ltd et al. v. The Deputy Minister of National Revenue for Customs and Excise (1970), Ex. C.R. 828; Olympia Floor and Wall Tile Company v. The Deputy Minister of National Revenue for Customs and Excise, 5 C.E.R. 562; Pfizer Company Limited v. The Deputy Minister of National Revenue for Customs and Excise (1977), 1 S.C.R. 456; Proprietors of Passaic & Hackensack River Bridges v. Hoboken Land Imp. Co. (1860), 13 N.J.Eq. (2 Beasl.) 503; Westeel Products Limited v. The Deputy Minister of National Revenue for Customs and Excise., 2 T.B.R. 106; Wilson v. Town of Barnstead (1906), 74 N.H. 78.*

Dictionaries Cited:

Funk & Wagnalls New Standard Dictionary of the English Language; The Oxford English Dictionary (Second Edition); Black's Law Dictionary (Revised Fourth Edition); The Houghton Mifflin Canadian Dictionary of the English Language; Webster's Third New International Dictionary of the English Language Unabridged; Webster's New World Dictionary (Second College Edition); Funk & Wagnalls Standard College Dictionary.

Author Cited: *Driedger, E.A., Construction of Statutes (Second Edition).*

Appeal No. 2845

CAN TRAFFIC SERVICES LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
ROBERT J. BERTRAND, Q.C., Member
W. ROY HINES, Member

REASONS FOR DECISION

SUMMARY

The appellant installed traffic control structures that span the highway. They are composed of structural steel supports onto which signs and/or lights are mounted. The assembled structures are then anchored into steel reinforced concrete foundations with anchor bolts. The structures, which are called sign bridge assemblies, serve the function of informing drivers and directing vehicular traffic.

The issue in this appeal is whether the assembled structures are bridges within the meaning of paragraph 1(*h*), Part XII, Schedule III of the *Excise Tax Act*¹ (the Act). If they are, then the appellant is entitled to claim a sales tax refund.

The word "bridge" is a word of common speech and must not be construed on the basis of technical and scientific testimony. Dictionary definitions are helpful in determining the common meaning of the word "bridge." A common element in the dictionary meaning of the word "bridge" is that of a structure which spans an obstruction and which affords passage to people and/or things. The goods in issue do not afford passage nor transit for pedestrians and/or things (e.g. vehicles).

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

THE LEGISLATION

The relevant legislative provisions of the Act as they read during the period in issue are as follows:

27(1) There shall be imposed, levied and collected a consumption or sales tax ... on the sale price of all goods

(a) produced or manufactured in Canada

...

29(1) The tax imposed by section 27 does not apply to the sale or importation of the goods mentioned in Schedule III ...

SCHEDULE III

PART XII

MUNICIPALITIES

1. Certain goods sold to ... municipalities for their own use and not for resale, as follows:

...

(h) structural steel ... for bridges,

...

THE FACTS

The appellant is a Canadian company that installs traffic control structures. The company was awarded a contract by the city of Lethbridge, Alberta, for the construction and installation of 13 such structures on the Crowsnest Trail Corridor. When completed, these structures, which are called sign bridge assemblies, span the highway. They are composed of structural steel supports onto which signs and/or lights are mounted. The assembled structures (the goods in issue) are then anchored into steel reinforced concrete foundations with anchor bolts. The structures serve the function of informing drivers and directing vehicular traffic.

Upon completion of the contract, the appellant filed a refund claim for \$20 394.72 with the Edmonton Office of Revenue Canada. It based its claim on the grounds that the assembled structures were bridges and therefore were sales tax exempt pursuant to paragraph 1(h), Part XII, Schedule III of the Act (hereinafter the exemption clause).

The refund claim was disallowed by Revenue Canada officials by Notice of Determination CAL 13860 on July 31, 1986. The claim was refused because the assembled structures "[did] not form a component part of a bridge whether it be substructure, superstructure or abutments." The appellant filed a notice of objection, but the Minister disallowed the appellant's claim on July 10, 1987, because "the ordinary and common meaning of the word 'bridge' as used within the context of paragraph 1(h), Part XII, Schedule III of the *Excise Tax Act* does not extend to the ... [goods] in issue."

The appellant then filed an appeal to the Tariff Board on August 25, 1987, pursuant to section 51.19 of the Act. Although the appeal was originally commenced before the Tariff Board, it was taken up and is continued by the Canadian International Trade Tribunal (the Tribunal) in accordance with subsection 54(2) and section 60 of the *Canadian International Trade Tribunal Act*.²

Three witnesses were called to testify in support of the appellant's position: Mr. Michael Kelly, an engineer and the President of Can Traffic Services Ltd.; Mr. Gordon Milne, a structural design engineer with Polesystems Inc., a company that sold to the appellant structural steel members used in the assembly of the goods in issue; and Mr. Michael Strong, a structural design engineer who has designed vehicular bridges and structures like those on appeal. He is the Vice-President of Reid Crowther, consulting engineers for the city of Lethbridge, Alberta.

According to the testimony of the appellant's witnesses, in order for a structure to be considered a bridge, the structure must span across some distance (i.e. it must have supports at either end) and must have the ability to support or "carry" loads (weights) imposed on the structure. The loads can either be stationary, as in the case of signs affixed to the structure, or moving, as in the case of vehicles or pedestrians.

The structure in issue is built solely for the purpose of supporting signs and/or lights. It does not provide any form of passage or transit for pedestrians, etc. However, the witnesses said that it was not necessary for the structure to afford passage in order to be considered a bridge.

The witnesses said that the goods in issue were called "sign bridges" by the people who design the structures, the suppliers of the components used to build the structures and contractors. Several documents were provided by the appellant to support the testimony of the witnesses. They include blue prints labelled "sign bridges" of structures like the goods in issue; invoices from the supplier of the steel members used in the assembly of the goods in issue, which refer to the goods as "sign bridge" or "sign bridge assembly;" and letters from consulting engineering firms, including Reid Crowther, that state that the goods in issue are a specific type of bridge because their design and construction follow the same general principles as vehicular and pedestrian bridges.

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

However, Mr. Strong said that an engineer who exclusively designed goods such as those in issue would not be considered a bridge designer. The engineer would be considered a sign bridge designer. In addition, Mr. Kelly acknowledged that the City of Lethbridge Tender Call variously refers to the goods in issue as "overhead sign bridges," "sign bridge structures" or "overhead sign supports."

The Tender Call requires the goods in issue to be built in accordance with a code entitled Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals (structural support code). This code is the one that is adopted by most Canadian jurisdictions, including the city of Lethbridge, as the basis for the design of structures like the goods in issue. It is produced by the American Association of State Highway and Transportation Officials (AASHTO), an organization, located in the United States of America, that produces various codes of practice in respect of transportation facilities. Its purpose is to ensure that there is uniformity amongst various jurisdictions in design and safety features.

Mr. Strong testified that the goods in issue were called sign bridges in the AASHTO structural support code. He said that the code grouped the goods with several other structures under the category "sign support structures." Both Mr. Strong and Mr. Milne agreed with the AASHTO structural support code categorization of the goods in issue.

In addition to the AASHTO structural support code, the AASHTO also has produced a code entitled Standard Specifications for Highway Bridges (the highway code). The witnesses said that the goods in issue were located in the structural support code.

Dr. Gamil S. Tadros testified in support of the respondent's position. He is a structural engineer with extensive experience in the design of vehicular bridges. He defined a bridge as a structure which allowed for the transit, over an obstacle, of people and/or things (e.g. automobiles, utilities) from one point to another. The obstacle could be a road, a river, etc.

According to Dr. Tadros, the goods in issue are a type of sign support structure. In his opinion, the Ontario Highway Bridge Design Code produced by the Ontario Ministry of Transportation and Communications (the Ontario code) provides the most accurate definition of the structures being considered in this appeal. The Ontario code places goods like those in issue under the chapter entitled "accessories" and describes the structures as "overhead sign supports."

The witness said that he would not consider himself to be a bridge engineer if he exclusively designed the structures in issue.

THE ISSUE

The issue in this appeal is whether the goods in issue are bridges within the meaning of the exemption clause. If they are, then the appellant is entitled to claim a sales tax refund.

The appellant submitted that the goods were exempt from sales tax. Counsel for the company said that the ordinary and common meaning of the word "bridge" had to be applied to the present dispute in order to determine whether the goods in issue fell within the exemption clause.

The appellant argued that the goods in issue fell within the ordinary and common meaning of the word "bridge" for three reasons. Initially, the goods in issue span across a highway, have supports at either end of the structure and carry a load.

Secondly, goods like those in issue are called "sign bridges" by the people who designed these structures, the suppliers of components used to build the structures and contractors.

Finally, the appellant argued that the primary and tertiary dictionary definitions of the word "bridge" encompassed the goods in issue. The appellant cited several dictionaries in support of this contention. These definitions are as follows:

Funk & Wagnalls New Standard Dictionary of the English Language (1963)

1. A structure erected across a waterway, ravine, road, or the like, serving for the passage of persons, animals, or vehicles, or as a means of support and transit, as for a water-main.

The Oxford English Dictionary (1989, 2nd. edition)

1. a. A structure forming or carrying a road over a river, a ravine, etc., or affording passage between two points at a height above the ground.

Black's Law Dictionary (1968, rev. 4th ed.)

A structure erected over a river, creek, stream, ditch, ravine, obstruction in highway or other place to facilitate the passage and for benefit of travelers.

The Houghton Mifflin Canadian Dictionary of the English Language (1982)

1. A structure spanning and providing passage over a waterway, railroad, or other obstacle. 2. Anything resembling or analogous to such a structure in form or function.

Webster's Third New International Dictionary of the English Language Unabridged (1979)

3: something resembling a bridge (as in serving as a support for or a way over something else) as ... 1: a framework that spans railroad tracks and support signals.

The respondent argued that the goods in issue were not bridges within the exemption provision and, therefore, that the structures were not sales tax exempt.

Like the appellant, the respondent argued that the meaning of the word "bridge" as set out in the exemption clause had to be interpreted according to common and ordinary language. The respondent relied on the Supreme Court of Canada decision in *Pfizer Company Limited v. The Deputy Minister of National Revenue for Customs and Excise*,³ the Tariff Board case of *Westeel Products Limited v. The Deputy Minister of National Revenue for Customs and Excise*,⁴ and excerpts from the text Construction of Statutes⁵ in support of this contention.

3. [1977] 1 S.C.R. 456.

4. 2 T.B.R. 106.

5. Driedger, E. A., Construction of Statutes (2nd ed.).

In arguing that the goods in issue did not come within the ordinary and common meaning of the word "bridge," the respondent cited dictionary definitions in addition to the ones relied on by the appellant, excerpts from encyclopedias and several decisions from the United States of America.

The respondent said that a common thread ran through all of these definitions and excerpts: bridges facilitated and provided passage and transit.

The additional dictionary definitions cited by the respondent are as follows:

Webster's Third New International Dictionary of the English Language Unabridged

1. a: a structure erected over a depression or an obstacle to travel (as a river, chasm, roadway, or railroad) carrying a continuous pathway or roadway (as for pedestrians, automobiles, or trains).

Webster's New World Dictionary (1970, Second College Edition)

1. a structure built over a river, railroad, highway, etc. to provide a way across for vehicles or pedestrians.

Funk & Wagnalls Standard College Dictionary (1976)

1. A structure erected across a waterway, ravine, road, etc., to afford passage.

The encyclopedia excerpts relied on by the respondent provide the following definitions of the word "bridge:"

McGraw-Hill Encyclopedia of Science and Technology

A structure erected to span natural or artificial obstacles, such as rivers, highways, or railroads, and supporting a footpath or roadway for pedestrian, highway, or railroad traffic.

The New Encyclopaedia Britannica

A bridge is a structure surmounting an obstacle such as a river, declivity, road, or railway and used as a passageway for pedestrian, motor, or rail traffic.

The respondent relied on a publication entitled Words and Phrases. Permanent Edition for statements from several United States decisions on the meaning of the word "bridge." The statements selected by the respondent are as follows:

A "bridge" is defined to be "any structure which spans a body of water, or a valley, road, or the like, and affords passage or conveyance."⁶

...

6. *Wilson v. Town of Barnstead* (1906), 74 N.H. 78.

Under the common law, and generally under the statutes in this country, a "bridge" includes the abutments and such approaches as will make it accessible and convenient to public travel.⁷

...

The term "bridge" has never "represented any structure or material thing which had not a footway across the stream. Not for the last thousand years has the term 'bridge,' either in England or this country, represented any structure which had not a footway, a horseway, and a wagonway. The footway for man and beast is of the very essence of the bridge.... The very nature and essence of the thing forbid that there should be a bridge without a pathway. The bridge, for all time and in all countries, has been but the continuation of the ordinary roadway. The only difference between a bridge and the rest of the road is that in the road the pathway rests immediately on the earth, while in the bridge it does not....⁸

Finally, the respondent noted that the definition of bridge provided by Dr. Tadros - a structure which allows for the transit, over an obstacle, of people and/or things - provided the Tribunal with another basis for denying the appellant's claim that the goods in issue fell under the exemption clause.

DECISION

In order for the goods in issue to qualify under the exemption clause, the goods must be "bridges" within that clause.

In the Tribunal's view, the Pfizer case (supra) and the Federal Court of Appeal decision in *Olympia Floor and Wall Tile Company v. The Deputy Minister of National Revenue for Customs and Excise*⁹ provide a useful guide regarding the principles to be applied in defining the meaning and scope of the word "bridge." Both cases are appeals from Tariff Board decisions.

The Pfizer case (supra) involved the meaning of the word "derivatives" in the expression "Tetracycline and its derivatives" found in the *Customs Tariff*. The issue in the case was whether salts of the antibiotic oxytetracycline were derivatives of the compound tetracycline. The Tariff Board relied on technical and scientific definitions and publications to define the meaning of the word "derivatives."

Mr. Justice Pigeon, speaking for the Supreme Court of Canada, said that the Tariff Board erred in using this approach. He noted the following:

7. *City of Chicago v. Pittsburgh, Ft. W. & C. R. Co.*, (1910) 93 N.E. 307, 308.

8. *Proprietors of Passaic & Hackensack River Bridges v. Hoboken Land Imp. Co.*, (1860) 13 N.J.Eq. (2 Beasl.) 503, 511.

9. 5 C.E.R. 562.

The rule that statutes are to be construed according to the meaning of the words in common language is quite firmly established and it is applicable to statutes dealing with technical or scientific matters, ... Of course, because "tetracycline" designates a specific substance the composition of which has been determined in terms of a chemical formula, resort may be had to the appropriate sources for ascertaining its meaning. In my view, this does not imply that "derivative" is to be construed as it might be in a scientific publication. The question concerns the meaning of "derivative" not of "tetracycline."¹⁰

The Olympia Floor and Wall Tile Company case (supra) dealt with the tariff classification of clay bodied ceramic building products. The issue in the case was whether the meaning of the phrase "Earthenware tiles" found in the *Customs Tariff* should be interpreted according to the ordinary sense of the term, as the Tariff Board had done, or according to its trade meaning. The Federal Court of Appeal ruled that the phrase had to be construed by its trade meaning. In so ruling, the Court quoted with approval the following comments made by Mr. Justice Kerr when he interpreted the phrase "lard compound and similar substances" in the *Customs Tariff* in the Exchequer Court decision of *Hunt Foods Export Corp. of Canada Ltd et al. v. The Deputy Minister of National Revenue for Customs and Excise*:¹¹

The words "similar substances" are indefinite except in relation to the words "lard compound". We must, therefore, first look to the meaning of "lard compound" ... This expression ... describes an article of commerce and is not, I think, an expression in common speech, except by persons who manufacture, sell or deal in the article. I think that it was open to the Tariff Board to determine the sense in which the expression is used in the mouths of those persons and to construe it ... in that sense....

The Tariff Board properly sought to ascertain from the experts to what extent and in what way the products in issue are similar to or dissimilar from lard compounds, as the latter are known in the trade. The experts were competent to give evidence in that respect. But the words "similar substances" ... are ordinary words that have no technical or special meaning, and it was for the Tariff Board to construe them in their ordinary and popular sense. It was not for the witnesses to define them or give a meaning to them.¹²

...

There are many words in the Act which are quite ordinary words, words used in ordinary conversation in an everyday way. The Tribunal considers that the word "bridge," as set out in the exemption clause, is a word of common speech. Such words are not to be construed on the basis of technical and scientific testimony.

10. Ibid, at p. 460.

11. [1970] Ex. C.R. 828.

12. Ibid. at p. 838.

Both parties have argued that the common and ordinary meaning of the word "bridge" in the exemption clause should govern the Tribunal's determination of whether the word "bridge" includes the goods in issue, but they have asked the Tribunal to make that determination partly on the basis of several technical documents (blue prints, highway codes, etc.) pertaining to the goods in issue and the opinions of expert witnesses on the meaning of the word "bridge." The Tribunal does not consider this testimony helpful in defining the meaning of the word "bridge" in the exemption clause given the foregoing principles of statutory construction. The documents and expert evidence apply a technical and scientific standard to define a common and ordinary word.

However, the Tribunal considers the various dictionary definitions submitted by the parties helpful in determining the common meaning of the word "bridge" in the exemption clause. In the Tribunal's view, Driedger, in his text entitled Construction of Statutes, has succinctly commented on the usefulness of dictionaries in determining the ordinary meaning of a word. He states:

*... What is the grammatical and ordinary or the natural and ordinary sense of words? The two expressions obviously mean the same thing, namely, the sense obtained by the application of the rules of grammar, giving the words their ordinary meaning. A meaning may be said to be ordinary if it is to be found in the dictionary. But there may be many meanings. Compilers of dictionaries usually place first in the list of meanings of a word the meaning most commonly used. This meaning is variously called the ordinary, common, popular or primary meaning....*¹³

The Tribunal notes that a common element in the primary meaning of the word "bridge" in all of the dictionaries submitted to the Tribunal is the concept of a structure which spans an obstruction and which affords passage to people and/or things. The Tribunal notes that the goods in issue do not afford passage nor transit for pedestrians and/or things (e.g. vehicles). The goods in issue are built solely for the purpose of supporting signs and/or lights to inform drivers and direct vehicular traffic.

However, the appellant has also argued that the tertiary definition of the word "bridge:" "something resembling a bridge (as in serving as a support for or a way over something else) as ... a framework that spans railroad tracks and supports signals" provides support for its contention that the goods in issue fall within the ordinary meaning of the word "bridge" in the exemption clause.

The Tribunal does not consider that the word "bridge" in the exemption clause can be construed to encompass this phrase. No extensive reference to dictionaries is required to determine that the word "resembling" means "similar to but not the same as." If Parliament had intended the word "bridge" in the exemption clause to include things which are similar to but not the same as bridges, as that word is most commonly used, it could have written the exemption clause to that effect.

13. Ibid., at p. 5.

CONCLUSION

After having examined the facts, the statutory language of the exemption clause and the relevant jurisprudence, the Tribunal concludes that the goods in issue do not come within the meaning of the word "bridge" in paragraph 1(*h*), Part XII, Schedule III of the Act.

Accordingly, the appeal is dismissed.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Member

W. Roy Hines

W. Roy Hines
Member