CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, March 30, 1990

Appeal No. 3095

IN THE MATTER OF an application heard September 26 and 27, and October 4, 1989, pursuant to section 51.19 of the *Excise Tax Act*, R.S.C. 1970, c. E-13, as amended;

AND IN THE MATTER OF a Notice of Decision of the Minister of National Revenue dated September 13, 1988, with respect to a Notice of Objection filed pursuant to section 51.17 of the *Excise Tax Act*.

BETWEEN

DENTSPLY CANADA LIMITED **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed. It is the finding of the Tribunal that the exemption for "articles and materials, not including cosmetics, necessary for the proper application and maintenance" of the items mentioned in section 19, Part VIII, Schedule III of the *Excise Tax Act* is intended to benefit the individual user of those goods. As the dental instruments and equipment at issue are for use by dental professionals, they do not qualify for exemption under that section. The Tribunal also finds that the remaining items of dental equipment are not eligible for exemption under section 5 or 22, Part VIII, Schedule III of the *Excise Tax Act*, as they are not articles or materials which are incorporated into or form a constituent part of the tax-exempt goods mentioned in Part VIII.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert J. Martin
Robert J. Martin
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. 3095

DENTSPLY CANADA LIMITED **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

Excise Tax Act - Determination of sales tax - Whether certain instruments and equipment used by dental professionals are eligible for exemption under section 19, Part VIII, Schedule III of the Excise Tax Act as articles necessary for the proper application and maintenance of materials for use in reconstructive surgery and/or medical or surgical prostheses - Whether items of dental equipment are exempt under section 5 or 22 of Part VIII as articles for use in the manufacture of artificial teeth and/or other tax-exempt goods enumerated in that Part - Whether the phrase "articles and materials for use in the manufacture of," in sections 5 and 22 of Part VIII, means that the goods must be incorporated into or form a constituent or component part of the finished goods.

DECISION: *The appeal is dismissed. It is the finding of the Tribunal that the exemption for "articles and materials, not including cosmetics, necessary for the proper application and maintenance" of the items mentioned in section 19, Part VIII, Schedule III of the Excise Tax Act is intended to benefit the individual user of those goods. As the dental instruments and equipment at issue are for use by dental professionals, they do not qualify for exemption under that section. The Tribunal also finds that the remaining items of dental equipment are not eligible for exemption under section 5 or 22, Part VIII, Schedule III of the Excise Tax Act, as they are not articles or materials which are incorporated into or form a constituent part of the tax-exempt goods mentioned in Part VIII.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*September 25 and 26, and October 4, 1989*
Date of Decision:	*March 30, 1990*
Panel Members:	*Kathleen E. Macmillan, Presiding Member* *Sidney A. Fraleigh, Member* *Arthur B. Trudeau, Member*
Counsel for the Tribunal:	*Donna J. Mousley*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*W. J. Millar, for the appellant* *J. B. Edmond, for the respondent*
Cases Cited:	*Regina v. Goulis (1981), 33 O.R. (2d) 55 (Ont. C.A.); Morguard Properties Ltd. et al. v. The City of Winnipeg, [1983] 2 S.C.R.*

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493; The Attorney General of Canada v. Royden Young et al., July 31, 1989, unreported (F.C.A.); Stubart Investments Limited v. Her Majesty The Queen, [1984] 1 S.C.R. 536; Bathurst Paper Limited v. Minister of Municipal Affairs of the Province of New Brunswick, [1972] S.C.R. 471; D.F. Lunnen Limited v. The Deputy Minister of National Revenue for Customs and Excise (1981), 7 T.B.R. 407; Re Van Allen, [1953] 3 D.L.R. 751; Pretty v. Solly (1859), 26 Beav. 606; Star Shipping Co. (Canada) Ltd. v. Deputy Minister of National Revenue for Customs and Excise, June 11, 1973, unreported (F.C.A.); Bristol-Myers Canada Inc. v. The Deputy Minister of National Revenue for Customs and Excise (1984), 85 D.T.C. 5024; Singer Sewing Machine Company of Canada Ltd. v. The Minister of National Revenue, Appeal No. 2951, Tariff Board, July 21, 1988; Universal Grinding Wheel v. The Deputy Minister of National Revenue for Customs and Excise (1984), 9 T.B.R. 194; Irving Oil Limited v. The Provincial Secretary of the Province of New Brunswick, [1980] 1 S.C.R. 787.

Statutes Cited: *Excise Tax Act, R.S.C. 1970, c. E-13, subs. 26(1), pars. 27(2)(a) and (b), ss. 5, 19 and 22, Part VIII, Schedule III, subpar. 1(a)(i), Part XIII, Schedule III; Excise Tax Act, R.S.C. 1970, c. E-13, as amended June 14, 1988, by S.C. 1988, c. 18, ss. 5, 19 and 22, Part VIII, Schedule III; Interpretation Act, R.S.C. 1985, subss. 45(2) and (3); Customs Tariff, R.S.C. 1985, c. 41 (3rd Supp.).*

Author Cited: *Driedger, E.A., Construction of Statutes, 2nd Edition, 1983.*

Other References Cited: *Budget Papers tabled in the House of Commons by the Honourable Michael H. Wilson, Minister of Finance, February 18, 1987, p. 61.*

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. 3095

DENTSPLY CANADA LIMITED **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member
SIDNEY A. FRALEIGH, Member
ARTHUR B. TRUDEAU, Member

REASONS FOR DECISION

SUMMARY

The appellant claims a refund of federal sales tax paid on dental instruments and equipment which, it argues, are exempt under sections 5, 19 and 22, Part VIII, Schedule III of the *Excise Tax Act*[1] (the Act). This claim is based on two grounds of argument. First, the appellant claims that certain instruments and equipment used by dental professionals are eligible for exemption under section 19 as articles necessary for the proper application and maintenance of materials for use in reconstructive surgery and/or articles necessary for the proper application and maintenance of medical or surgical prostheses. The appellant also claims that items of dental equipment are exempt under section 5 or 22 as articles for use in the manufacture of artificial teeth and/or articles for use exclusively in the manufacture of the tax-exempt goods mentioned in Part VIII.

The issues to be decided chiefly involve questions of statutory interpretation, and as an approach to this task, the Tribunal is wholly in support of the "plain meaning rule" endorsed by Justice Estey in *Stubart Investments Limited v. Her Majesty The Queen*.[2] When the plain meaning of section 19 is considered in its entire context, it is evident to the Tribunal that for the articles and materials to be tax-exempt, they must be used by the individual wearer of the prosthesis, appliance or article. Since the articles in question are employed by dental practitioners and not actual users of the prostheses or other devices, the Tribunal considers that the goods are not entitled to exemption from tax.

The Tribunal also considers that the repeal of section 21 which provided an exemption for "Surgical and dental instruments of any material" had the effect of removing such articles from tax exemption. Faced with the repeal of a provision that specifically described the goods at issue, it is not open to the appellant to classify them under a more general, and in the case of these goods, more ambiguous exempting provision.

The second ground of argument concerns the interpretation of the phrase "Articles and materials for use ... in the manufacture ... of." The appellant argues that the phrase means simply "for use in the making of" the tax-exempt goods; the respondent argues that the articles must be incorporated into or form a constituent part of those goods. The Tribunal concludes, on the basis of the jurisprudence, that the "articles and materials for use in the manufacture" of artificial teeth and other exempt items mentioned in Part VIII must be incorporated into or form a constituent part of the final manufactured items to qualify for exemption.

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1. R.S.C. 1970, c. E-13.
2. [1984] 1 S.C.R. 536.

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This reading of the Act is reinforced by the rule of interpretation which holds that a specific provision shall prevail over a more general provision which appears to comprehend the same subject matter. As the exemptions for production equipment are set out in Part XIII of Schedule III, where subparagraph 1(*a*)(i) specifically provides for machinery and apparatus for use in the manufacture of goods, the Tribunal concludes that the exemptions provided in sections 5 and 22 of Part VIII were not meant to embrace production equipment.

THE LEGISLATION

For the purpose of this appeal, the relevant statutory provisions are as follows:

Excise Tax Act, R.S.C. 1970, c. E-13.

SCHEDULE III

PART VIII

HEALTH

5. Artificial teeth and articles and materials for use in the manufacture thereof.

...

19. Aural, nasal, mastectomy and other medical or surgical prostheses; materials for use in reconstructive surgery; ileostomy, colostomy and urinary appliances or similar articles designed to be worn by an individual; articles and materials, not including cosmetics, necessary for the proper application and maintenance of the foregoing.

...

22. Articles and materials for use exclusively in the manufacture or production of the tax-exempt goods mentioned in this Part.

Excise Tax Act, R.S.C. 1970, c. E-13, as amended June 14, 1988, by S.C. 1988, c. 18, with deemed effect from February 19, 1987.

5. Artificial teeth.

...

19. Aural, nasal, mastectomy and other medical or surgical prostheses; ileostomy, colostomy and urinary appliances or similar articles designed to be worn by an individual; articles and materials, not including cosmetics, for use by the individual user of the prosthesis, appliance or similar article and necessary for the proper application and maintenance of the foregoing.

...

22. Articles and materials to be incorporated into or to form a constituent or component part of any of the tax-exempt goods mentioned in this Part when sold to or imported by a manufacturer or producer for use by that manufacturer or producer in the manufacture or production of any such tax-exempt goods.

THE FACTS

The appellant, Dentsply Canada Limited (Dentsply), is an importer and wholesaler of an extensive line of dental products. These products are sold to distributors for sale to dental and medical professionals. On June 30, 1987, Dentsply filed a refund claim for tax paid on certain products sold during the period from June 1, 1983, to February 18, 1987, on the basis that these products were exempt from taxation under Part VIII, Schedule III of the Act.

By Notice of Determination dated August 19, 1987, this refund claim was denied. The appellant then filed a Notice of Objection. In the Notice of Decision dated September 13, 1988, the Minister of National Revenue confirmed the previous determination.

The appellant claims that the dental products at issue qualify for exemption under sections 5, 19 and 22, Part VIII, Schedule III of the Act, entitled "Health." On June 14, 1988, these sections were amended[3] with retroactive effect from February 19, 1987. It is not disputed by the appellant that the products at issue are not now exempt from taxation.

The appellant has broadly grouped the dental products into three categories according to the exemption being claimed for each group. They are thus identified as follows:

Group A - Section 19	Group B - Section 19	Group C - Sections 5 & 22
Rotary instruments (diamonds and burs)	Prisma lites	Triad equipment
	Amalgamators	Articulators
Forceps	Prophylaxis systems	Dicor casting units
Hand instruments	Endodontic systems	Dicor ceramming furnaces
Endodontic instruments	Evacuating systems	Vacupresses
Endosonic instruments	Operating lites	

A representative sample of each of the dental products listed in the three groups was entered into evidence and described by the Director of sales and marketing for Dentsply. The second witness appearing for the appellant was Dr. Watson, a professor of dentistry at the University of Toronto who also has a part-time private practice in the area of dental prosthetics. Dr. Watson gave expert testimony on the application of the various dental products in evidence and on aspects of dentistry relevant to this appeal.

Generally speaking, the facts in this case are not in dispute, and the evidence presented by the appellant concerning the use of the various dental instruments and equipment was not contradicted by the respondent. Rather, the resolution of this appeal primarily turns on a question of statutory interpretation.

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3. *Excise Tax Act*, R.S.C. 1970, c. E-13, as amended by S.C. 1988, c. 18.

If the Tribunal accepts the interpretation urged by the appellant, then the task of the Tribunal will be to define and delimit the scope of dental instruments and equipment which qualify for exemption. If, on the other hand, the Tribunal accepts the interpretation argued by the respondent, a further consideration of the evidence will be unnecessary. Thus, it is appropriate to begin with an examination of the issues which are raised in this appeal.

THE ISSUES

The appellant claims that the items in Group A are exempt under section 19 as instruments necessary for the proper application and maintenance of materials for use in reconstructive surgery and/or medical or surgical prostheses. Similarly, it is claimed that the items in Group B constitute equipment necessary for the proper application and maintenance of materials for use in reconstructive surgery and/or medical or surgical prostheses and thus, are exempt under section 19.

The appellant argues that the goods in Group C are used in the manufacture of artificial teeth or used exclusively in the manufacture of medical or surgical prostheses. Thus, they are eligible for exemption under either section 5 or 22 of the Act.

In order to qualify for the exemption under section 19, the appellant states that four constituent elements must be satisfied. First, the goods under consideration must be articles and/or materials. Second, they must not be cosmetics. Third, the goods must have application to medical or surgical prostheses and/or materials used for reconstructive surgery. And last, they must be necessary for the proper application and maintenance of the exempt goods which constitute the third element.

It is not disputed by the respondent that the first and second constituent elements have been met. The dental instruments in Group A and the dental equipment in Group B constitute articles and/or materials, and none of the products at issue are cosmetics. The third constituent element comprises two parts. The appellant claims that the dental instruments and equipment in Groups A and B are exempt as a result of their application to medical or surgical prostheses and/or their application to materials for use in reconstructive surgery.

In respect to the first part, the appellant states that the dental procedures for which the various products are used relate to medical and surgical prostheses. Dr. Watson, testifying for the appellant, stated that dentistry is a field of medicine and that every dentist is a doctor of dental surgery (D.D.S.). Surgery, as defined by Dr. Watson, constitutes any cutting of living tissue. In dentistry, surgery involves the cutting of the gingiva (gum tissue) or teeth, which are both living tissue. The appellant thus asserts that the description of prostheses in section 19 as "medical or surgical" implicitly includes dental prostheses.

The definition of "prosthesis" put forward by Dr. Watson was "any replacement of living tissue to restore, as nearly as possible, normal function." In the field of dentistry, he stated, this includes the full spectrum of dental restorative work, from resin or amalgam restorations to full dentures. Resin and amalgam restorations, or "fillings," are considered to be dental prostheses as they are replacements of living tissue to restore form and function. The appellant thus asserts that the following items are dental prostheses: full dentures, partial dentures, bridges, crowns and pegged teeth, root canals and amalgam or resin restorations.

In the event that the Tribunal concludes that root canals and amalgam or resin restorations do not constitute prostheses, the appellant argues that the dental products in Groups A and B nonetheless qualify for exemption as a result of their use in respect to "materials for use in reconstructive surgery." Revenue Canada ruling 7355/15 of August 28, 1987, sets out a list of the materials for use in reconstructive surgery which qualified for exemption before section 19 was amended. Dr. Watson, in his testimony, identified many of these materials as those which are used for dental restorations such as fillings and root canals. Counsel therefore concludes that the third branch of the test is met, as the instruments and equipment at issue are used in dental procedures relating to "dental prostheses" or "materials for use in reconstructive surgery."

The fourth constituent element qualifying the exemption in section 19 is that the instruments and equipment in Groups A and B must be necessary for the proper application and maintenance of medical or surgical prostheses and/or materials for use in reconstructive surgery. In the view of counsel, the word "proper" as it applies to "application and maintenance" means "the recommended and approved procedures prevailing in the dental profession." The words "necessary for" mean that "the particular articles involved are functionally prerequisite to performing the particular dental procedure in accordance with the recommended and approved dental techniques."

Counsel for the appellant states that each of the items in Groups A and B are used in connection with the proper placement or maintenance of materials, as they are each involved in some aspect of the continuous process of dental surgery. Those instruments and the equipment for use in prophylaxis are necessary to surgical procedure, as they clean the site in preparation for surgery. These same articles are also used for maintenance of the teeth. Other instruments and equipment are used for removing necrotic teeth in preparation for surgery, mixing amalgam for placement in a tooth cavity, curing the resin restoration, compacting reconstructive materials into a tooth and finally, finishing, contouring and polishing the teeth. In addition, counsel argued, certain other products are essential to any surgical procedure. Among the items listed are the mirror, evacuators and operating lites. The appellant thus concludes that each of the four constituent elements are satisfied, qualifying the items in Groups A and B to exemption under section 19.

The appellant then argues that the items in Group C qualify for exemption under either section 5 or 22 of Part VIII. To qualify for exemption under section 5, counsel states that three constituent elements must be satisfied: first, the goods must be articles and materials; second, they must be for use in manufacture; and third, the items must be for use in the manufacture of artificial teeth.

The first element is not in dispute. In respect to the third element, counsel for the appellant asserts that the term "artificial teeth" should be accorded the meaning given to it by Dr. Watson as "All or part of a tooth restored with artificial materials, including metals, ceramics and polymers." This definition, argues counsel, encompasses full and partial dentures, bridges and crowns, as crowns are part of a tooth restored with artificial materials.

Manufacturing, says counsel, is the "process of giving new forms, qualities and characteristics to goods," and thus the phrase "for use in the manufacture of artificial teeth" means simply "for use in the making of artificial teeth from the appropriate metal, ceramic and/or polymer materials." As the items in Group C are all used in the manufacture of artificial teeth, counsel concludes that the third constituent element of section 5 is also satisfied.

While the appellant asserts that the term "artificial teeth" in section 5 comprehends crowns, in the alternative, counsel argues that the Dicor equipment qualifies for an exemption under section 22 of the Act. This equipment, as stated by Dr. Watson, is used exclusively in the manufacture of crowns, which are dental prostheses or reconstructive materials. As the Dicor equipment is designed and marketed exclusively for the making of Dicor crowns, the appellant claims that it qualifies for exemption under section 22 of Part VIII.

The respondent argues that the exemption in section 19 for "articles and materials ... necessary for the proper application and maintenance of the foregoing" is a provision intended to benefit only the individual user of the prosthesis, appliance or similar article. Thus, the instruments and equipment enumerated in Groups A and B, which are for use by the dental profession, are not exempt under that section.

Maintenance of the prosthesis, appliance or similar article is typically carried out by the individual user, argues counsel. Thus, the word "application" should be interpreted in the context of "application and maintenance," by the *noscitur a sociis* rule, as limited also to application by the individual user. As stated in the case of *Regina v. Goulis*,[4] the *noscitur a sociis* rule "is an ancient rule of statutory construction ... [by which] the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it ...." By implication, therefore, the word "application" must also apply to the individual user.

In support of this interpretation, counsel referred to Ruling 7355/6 of December 23, 1985, in which the Department of National Revenue lists the following goods which qualify for tax exemption when purchased by an individual for the application and maintenance of the tax-exempt appliances: ostomy deodorant and detergent, antibacterial solution, skin ointment and protective dressing, skin conditioner cream, surgical solvent and absorbent wipes and swabs. As these are generally considered to be products used by an individual for the application and hygienic maintenance of personal appliances and prostheses, counsel concludes that the context of this exemption requires that it be directed to the individual user.

Counsel for the respondent then moved to a consideration of the intent of the legislators in enacting section 19 and its subsequent amendments and the kinds of documentary evidence which may be used by a tribunal to discover that intention. It was argued by counsel that the Budget Papers, tabled in Parliament by the Minister of Finance on February 18, 1987,[5] were a legitimate extraneous source to aid in the interpretation of section 19. In that document, the following explanation is provided for the proposed amendments to section 19:

> *Articles and materials and supplies acquired by the medical profession are subject to sales tax. Questions have risen about the tax status of certain dental supplies and equipment. Amendments are proposed to confirm that the sales tax is applicable to all supplies acquired by medical and dental professionals.*

Counsel for the respondent argues that this document may be relied upon by the Tribunal and is conclusive of the proposition that the exemptions in section 19 were always intended to benefit only the individual user of the articles and materials at issue.

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4. (1981), 33 O.R. (2d) 55 (Ont. C.A.).
5. Budget Papers tabled in the House of Commons by the Honourable Michael H. Wilson, Minister of Finance, February 18, 1987, p. 61.

In support of the use of the Budget Papers as legitimate extrinsic evidence of the intention of Parliament, counsel for the respondent cited recent cases of the Supreme Court of Canada[6] and the Federal Court of Appeal[7] to show that certain documents, such as the report of a Commission of Enquiry or the Debates of the House of Commons, may be used to aid in the interpretation of a statute.

Finally, in support of the argument that the amendment to section 19 does not imply a change in the law with respect to that section, counsel for the respondent refers to subsections 45(2) and (3) of the *Interpretation Act*,[8] which state:

> 45*(2) The amendment of an enactment shall not be deemed to be or to involve a declaration that the law under that enactment was or was considered by Parliament or other body or person by whom the enactment was enacted to have been different from the law as it is under the enactment as amended.*
>
> *(3) The repeal or amendment of an enactment in whole or in part shall not be deemed to be or to involve any declaration as to the previous state of the law.*

In conclusion, counsel for the respondent asserts that the amendment to section 19 does not indicate a change in the law and that it was always the intention of Parliament to exempt from taxation only those articles and materials used by an individual for the proper application and maintenance of prostheses and similar articles.

The alternative position of the respondent, in the event the Tribunal concludes that goods for use by dental professionals are exempt under section 19, is that only those items actually used to apply or maintain dental prostheses or materials for use in reconstructive surgery are exempt from taxation. The words of section 19, argues counsel, should not be read as allowing a blanket exemption for all articles involved in carrying out surgery. Rather, the word "application" should be read as having a specific meaning in relation to those articles for which an exemption is sought. According to counsel, articles that do not come into actual contact with the items listed in section 19 do not qualify for the exemption provided by that section. Counsel for the respondent thus proposes that there is a natural division of the items listed in Groups A and B according to their application to two types of dental procedures: those instruments involved primarily in preparation of the site for surgery and those articles used primarily for the application of prostheses or materials for reconstructive surgery. Only the latter goods would qualify for exemption under this alternative interpretation.

The respondent argues that the exemption in sections 5 and 22 for "Articles and materials for use exclusively in the manufacture" of the tax-exempt articles in Part VIII is available only for goods incorporated into or forming a constituent or component part of those tax-exempt goods.

In response to the appellant's argument that sections 5 and 22 comprehend an exemption for "articles and materials" used to manufacture the exempt health goods, the respondent asserts that the tax exemption for machinery and apparatus for use in the manufacture or production of

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6. *Morguard Properties Ltd. et al. v. The City of Winnipeg*, [1983] 2 S.C.R. 493.
7. *The Attorney General of Canada v. Royden Young et al.*, July 31, 1989, unreported (F.C.A.).
8. R.S.C. 1985, c. I-21.

goods is provided in Part XIII, entitled, in part, "Production Equipment." "Articles and materials," which is a broader category of goods than "machinery and apparatus," should therefore be seen as having a meaning distinct from the category of goods provided for in Part XIII so as to avoid redundancy. Counsel also states that it is a rule of statutory interpretation that the more particular provision is to be favoured over the more general and, thus, if an exemption is available for the production equipment in Group C, it is under Part XIII of Schedule III.

Secondly, argues the respondent, it is consonant with the purpose of the Act as a whole that an exemption be provided for those articles and materials which are incorporated into tax-exempt finished products. The respondent argues that this conclusion is confirmed by an examination of the overall scheme of the Act. Whereas the object of the Act is to impose a single incidence tax, primarily on sales, in order to avoid double taxation, paragraphs 27(2)(*a*) and (*b*) of the Act provide that partly manufactured goods sold by one licensed manufacturer to another, or imported by a licensed manufacturer, are exempt from tax. "Partly manufactured goods" are defined in subsection 26(1) of the Act, in part, as follows:

> *(a) goods that are to be incorporated into or form a constituent or component part of an article that is subject to the consumption or sales tax ...*

Just as the intent of Parliament in enacting the scheme of taxation relating to partly manufactured goods is to allow the tax-exempt purchase of articles to be incorporated into taxable goods, the respondent argues that the purpose of exempting "Articles and materials for use exclusively in the manufacture or production of" Schedule III goods is to provide equivalently for the tax-exempt purchase of articles and materials to be incorporated into unconditionally exempt goods. Thus, the phrase "Articles and materials for use exclusively in the manufacture or production of the tax-exempt goods ..." is employed throughout Schedule III.

This interpretation, argues the respondent, is confirmed and clarified by the February 19, 1987, amendments to the Act which now make explicit that articles and materials must be incorporated into or form a constituent part of the tax-exempt goods in Part VIII in order to qualify for exemption. As none of the goods in Group C is incorporated into artificial teeth or any other of the goods listed in Part VIII, none is eligible for exemption under section 5 or 22.

DECISION

At the heart of the many legal arguments presented during the course of this appeal is a question of statutory interpretation. As an approach to this task, the Tribunal is wholly in support of the "plain meaning rule" endorsed by Justice Estey in the now well-known dicta from *Stubart Investments Limited v. Her Majesty The Queen.*[9] Remarking on the movement towards a simplified approach to the interpretation of legislation in general, and taxing statutes in particular, Justice Estey concludes as follows:

> *Courts today apply to [the taxing] statute the plain meaning rule, but in a substantive sense so that if a taxpayer is within the spirit of the charge, he may be held liable ....*

9. [1984] 1 S.C.R. 536, at page 578.

> *While not directing his observations exclusively to taxing statutes, the learned author of Construction of Statutes, 2nd ed. (1983), at 87, E A Driedger, put the modern rule succinctly:*
>
> *Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament*.

A second underlying principle is that the burden of proof is on the taxpayer to show that the goods at issue fall within the exempting provisions. Driedger, in a passage quoted with approval by the Federal Court of Appeal,[10] addressed the two principles in the following manner, at p. 207:

> *... where a subject alleges that he is exempt from taxation the onus is on him to show that he comes within the exemption, and, unless he can show beyond a reasonable doubt that he does, he has failed to discharge his onus. But there are no special rules or canons of construction for tax exemptions, and whether a subject is taxable or exempt depends in all cases on the intention of the legislature to be ascertained in the normal way.*

The normal way is as described by Driedger in the passage quoted in Stubart Investments.

Against these principles which form the framework for resolving the issues, two grounds of argument are raised by the appellant. First, the appellant claims that the items in Groups A and B are eligible for exemption under section 19 as articles necessary for the proper application and maintenance of materials for use in reconstructive surgery and/or articles necessary for the proper application and maintenance of medical or surgical prostheses. The appellant also claims that the items listed in Group C are exempt under section 5 or 22 as articles for use in the manufacture of artificial teeth and/or articles for use exclusively in the manufacture of the tax-exempt goods mentioned in Part VIII.

It is the conclusion of the Tribunal, in regard to the first ground, that section 19 does not comprehend an exemption for the dental instruments and equipment listed in Groups A and B when the plain meaning of the words are considered in their entire context, harmoniously with the scheme of the Act and the intention of Parliament. While the appellant made adroit use of certain phrases in that section, removed and examined apart from the whole, the section does not reasonably bear the interpretation that the appellant urges upon it when those phrases are restored and viewed in their proper context.

Rather, there are several indicators within section 19 and Part VIII as a whole which argue for the interpretation asserted by the respondent; that is, that the exemption for "articles and materials, not including cosmetics ... necessary for the proper application and maintenance" of the enumerated items is intended to benefit the individual user of the prosthesis, appliance or similar article.

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10. *Bristol-Myers Canada Inc. v. The Deputy Minister of National Revenue for Customs and Excise* (1984), 85 D.T.C. 5024.

First, it is apparent that all the devices enumerated in section 19 are designed to be worn by an individual. Consequently, the context naturally suggests that the articles and materials required for their application and maintenance would also be used by the individual users of those devices. In addition, the phrase "not including cosmetics" logically has meaning only for the individual user and purchaser of personal care products.

It was argued by the respondent that the use of the word "application" in conjunction with the word "maintenance" is further evidence that the exemption is directed to the individual user. As the hygienic maintenance of such items as the urinary and colostomy appliances is obviously a personal matter, by the *noscitur a sociis* rule, the word "application" is also given a personal use context. The Tribunal is also of the view that if the exemption were intended to comprehend articles for use in the type of surgical operations described by the appellant, the legislators would have used the proper medical terminology, rather than the word "application," which connotes a personal exercise in the present context. Finally, in regard to the phrase "proper application and maintenance," it seems clear that the adjective "proper" would only be addressed to the lay user of the prosthesis or appliance as a description of the required application and maintenance.

The Tribunal also considers that the repeal of section 21, which previously provided an exemption for "surgical and dental instruments of any material," must have significance for determining the scope of the articles intended to be exempted under section 19. Until the repeal of section 21, the dental instruments and equipment at issue, which appear to cover the full range of dental instruments, were exempt from taxation by virtue of this provision. To state that the same items are now exempt under a much more general and, for the purposes argued by the appellant, obscurely worded provision is to render the repeal of section 21 meaningless.

In a similar situation,[11] the Supreme Court was called upon to determine the effect of the repeal of a specific exemption on a more general provision left unamended. Justice Laskin (as he then was) reasoned that where a matter is described by special words in a statute and also within the ambit of the general language of another subsection, the repeal of the special words removes the matter from the purview of the entire statute. The general language is thereafter construed so as to exclude what might otherwise have fallen within its scope. In the following passage, which has particular relevance to the circumstances of the present appeal, Justice Laskin considers the general effect of changes to legislation:[12]

> *... The appellant asks this Court to say that what has been expressly excluded has at the same time been impliedly retained. This is not a logical proposition, even though the language of the amended definition lends some credence to it ....*
>
> *There is another consideration that is equally telling. Legislative changes may reasonably be viewed as purposive, unless there is internal or admissible external evidence to show that only language polishing was intended. The submission of the appellant would have it that the amendment in 1968 accomplished nothing of substance, but merely improved the drafting. This is, in my opinion, an untenable position.*

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11. *Bathurst Paper Limited v. Minister of Municipal Affairs of the Province of New Brunswick*, [1972] S.C.R. 471.
12. Ibid, page 477.

In this case, the repeal of the specific exemption for dental instruments of any material removed that class of goods from the scope of a more general exempting provision and, indeed, from exemption anywhere in the Act. Thus there can be no exemption for dental instruments under section 19 of Part VIII.

Much debate during the hearing focused on the effect of the amendments of February 19, 1987, to the Act on certain provisions of Part VIII, including sections 5, 19 and 22. As a result of those amendments, section 19 now specifically states that the exempt articles and materials at issue are "for use by the individual user of the prosthesis, appliance or similar article ...." The respondent argues that this amendment is merely confirmation and clarification of the law as it stood before the amendment; the appellant argues that the changes significantly alter the meaning of that section and therefore indicate a change in the law. While counsel for the respondent introduced part of the text of the Budget Papers tabled in the House of Commons to support his view, the Tribunal does not consider those particular references to be helpful, in the present case, in resolving the ambiguities in the legislative provisions under consideration.

In light of the decision of the Tribunal as to the proper interpretation of section 19 previous to the amendments, the Tribunal finds that the effect of the amendment was to clarify the law as it stood previous to the amendment. This conclusion is underscored by subsection 45(2) of the *Interpretation Act* which states that "The amendment of an enactment shall not be deemed to be ... a declaration that the law under that enactment was ... different from the law as it is under the enactment as amended."

As noted by the appellant, the exemption for "materials for use in reconstructive surgery" has been removed, and this is clearly a change in the law. However, the Tribunal finds nothing in the remainder of section 19 to suggest that the words of the section, as clarified in the amendment, convey a meaning different from the section prior to the amendment. In conclusion, as the dental items in Groups A and B are not for use by the individual user of the goods listed in section 19, no exemption is available for them under that section.

The second ground of argument concerns the interpretation of the phrase "Articles and materials for use ... in the manufacture ... of." The appellant argues that the phrase means simply "for use in the making of" the tax-exempt goods; the respondent argues that the articles must be incorporated into or form a constituent part of those goods.

The amendment to section 22 now expressly states that the articles and materials, in order to be exempt, must "be incorporated into or ... form a constituent or component part of any of the tax-exempt goods mentioned in [Part VIII]." The Tribunal is also pursuaded in this instance that this was the intended meaning of the provision prior to the amendments of February 19, 1987.

The Tribunal finds support for this interpretation in the Federal Court of Appeal case of *Star Shipping Co. (Canada) Ltd. v. The Deputy Minister of National Revenue for Customs and Excise.*[13] Justice Thurlow, for the court, in a brief statement on the issue declared as follows:

13. June 11, 1973, unreported (F.C.A.).

> *Materials for use exclusively in the equipment and repair of ships means materials to be used for that purpose once and for all so that they are subsequently, so far as they thereafter exist, part of the ship equipped or repaired.*
>
> *The objects here in question have not become, and the evidence of the system of their use show that it was never intended that they should become, part of the equipment of any ship. They are simply articles imported into Canada for use in loading and unloading cargo into or from any of the Star Line ships.*

The decision in Star Shipping Co. was followed by the Tariff Board in the case of *D.F. Lunnen Limited v. The Deputy Minister of National Revenue for Customs and Excise*.[14] In that case, the appellant sought a declaration that diesel oil and gasoline used in fishing vessels were exempt from taxation as "articles and materials for use exclusively in the manufacture, equipment or repair of ships ...." The Board dismissed the appeal, holding that the exemption was available only to those articles and materials that became a part of a vessel at the time of construction, fitting or repair.

Counsel for the appellant placed considerable weight on the Tariff Board decision in *Singer Sewing Machine Company of Canada Ltd. v. The Minister of National Revenue*[15] in which the Board held that the phrase "for use in manufacture" in section 2, Part XV of Schedule III does not require that articles be incorporated into or become a component part of the manufactured goods. With respect, the Tribunal is not in accord with the conclusions reached by the Tariff Board in that decision. Rather, the Tribunal concurs in the view expressed by Mr. Bertrand in his dissenting decision in *Universal Grinding Wheel v. The Deputy Minister of National Revenue for Customs and Excise*.[16] The issue in that case was whether grinding wheels used by the appellant to manufacture dental burrs were properly classified as "materials and articles for use in the manufacture of" dental instruments. Mr. Bertrand concluded that the words "materials and articles for use in the manufacture of" meant that the materials and articles had to be incorporated in or become a physical part of the finished product to be classified under that tariff item and thus would have dismissed the appeal.

That particular debate was resolved by the enactment of the new *Customs Tariff*[17] which provides, in section 4, that the expression "for use in" means " ... unless the context otherwise requires, that the goods must be wrought into, attached to or incorporated into other goods ...." While it is not permissible to simply transfer a definition clause from one statute to another, it is common ground that for the purpose of ascertaining the meaning of a word or phrase in a statute, the usage of that word in other statutes may be looked at, particularly when those acts are *in pari materia*. The fact that the *Customs Tariff* interprets this phrase in the way the Tribunal has concluded is its proper interpretation under the relevant sections of the *Excise Tax Act*, is simply further support for that conclusion.

In summary, the Tribunal finds that the "articles and materials for use in the manufacture" of artificial teeth and other exempt items mentioned in Part VIII must be incorporated into or form a constituent part of the final manufactured items to qualify for exemption.

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14. (1981), 7 T.B.R. 407.
15. Appeal No. 2951, Tariff Board, July 21, 1988.
16. (1984), 9 T.B.R. 194.
17. R.S.C. 1985, c. 41 (3rd Supp.).

This reading of the Act is reinforced by the rule of interpretation which holds that a specific provision shall prevail over a more general provision which appears to comprehend the same subject matter.[18] As argued by the respondent, the exemptions available for production equipment are clearly set out in Part XIII of Schedule III. Paragraph 1(*a*)(i) of Part XIII provides an exemption for machinery and apparatus for use in the manufacture or production of goods where those goods are sold to manufacturers or producers. It is not disputed that the items in Group C are production equipment, and further, that they are machinery and apparatus. However, the exemption provided in paragraph 1(*a*)(i) of Part XIII is not unconditional, and in order to qualify, the goods must be sold to manufacturers or producers. As Dentsply sells its products to distributors and not to manufacturers or producers, it is not eligible for this exemption.

Similar issues to these were also the subject of the decision in the D. F. Lunnen Limited[19] case. The appellant in that case argued that fuel for a ship qualified for exemption under Part XVII of Schedule III as "articles and materials for use exclusively in the manufacture, equipping or repair of those tax exempt goods," where certain ships and marine vessels were also tax-exempt under that Part. The Board noted that an exemption for fuels was specifically provided in another Part of Schedule III and reasoned as follows:[20]

> *... the Board notes that Schedule III of the Act makes special provision for "Fuels and Electricity" in Part VI, paragraph 2 of which enumerates "diesel fuel oil when used in internal combustion engines engaged in logging operations and in the manufacture of rough lumber". In the Board's opinion it is not logical to assume that the legislators, having provided for fuels in Part VI, would depart from this arrangement by including fuels within the meaning of the word materials in Part IX or Part XVII.*

As specific exemptions are provided for production equipment in Part XIII of Schedule III, the Tribunal is of the view that the exemptions provided in sections 5 and 22 of Part VIII were not meant to embrace those goods. Counsel for the appellant cited the cases of *Irving Oil Limited v. The Provincial Secretary of the Province of New Brunswick*[21] and *Bristol-Myers Canada Inc. v. The Deputy Minister of National Revenue for Customs and Excise*[22] to argue that a specific exemption cannot create an inference to restrict the scope of other exemptions. The Tribunal considers, upon review of those cases, that the proposition for which they are cited is only applicable where a specific exemption is so narrowly restricted to a particular class and is so specific in its character and purpose as to make it irrelevant to taxpayers or subjects outside that class. That is not the case in this appeal.

In the result, the Tribunal concludes that the dental equipment in Group C is not eligible for exemption under either section 5 or 22.

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18. *Re Van Allen*, [1953] 3 D.L.R. 751; *Pretty v. Solly* (1859), 26 Beav. 606.
19. (1981), 7 T.B.R. 407.
20. Ibid., p. 414.
21. [1980] 1 S.C.R. 787.
22. (1984), 85 D.T.C. 5024.

CONCLUSION

The appeal is not allowed. It is the finding of the Tribunal that the exemption for "articles and materials, not including cosmetics, necessary for the proper application and maintenance" of the items mentioned in section 19, Part VIII, Schedule III of the *Excise Tax Act* is intended to benefit the individual user of those goods. As the dental instruments and equipment at issue are for use by dental professionals, they do not qualify for exemption under that section. The Tribunal also finds that the remaining items of dental equipment are not eligible for exemption under section 5 or 22, Part VIII, Schedule III of the *Excise Tax Act*, as they are not articles or materials which are incorporated into or form a constituent part of the tax-exempt goods mentioned in Part VIII.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member