



Ottawa, Friday, February 2, 1990

Appeal No. 3097

IN THE MATTER OF an appeal heard May 15, 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 decision of the Minister of
National Revenue dated October 25, 1988, with respect to a
Notice of Objection served pursuant to section 51.17 of the
Excise Tax Act.

BETWEEN

MULLEN TRUCKING LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal declares that the "TRIPMASTER Trip Recording System" manufactured by Rockwell International and installed into trucks operated by the appellant does not qualify for exemption from sales tax pursuant to section 8, Part XVII, Schedule III of the *Excise Tax Act*.

W. Roy Hines
W. Roy Hines
Presiding Member

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

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 3097

MULLEN TRUCKING LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Excise Tax Act - Determination of sales tax - Whether the appellant may claim a refund under section 8, Part XVII, Schedule III of the Excise Tax Act for federal sales tax paid on the "TRIPMASTER Trip Recording System" which was purchased and installed into trucks operated by the appellant for use in its business.

DECISION: *The appeal is dismissed. The Tribunal declares that the "TRIPMASTER Trip Recording System" manufactured by Rockwell International and installed into trucks operated by the appellant does not qualify for exemption from sales tax pursuant to section 8, Part XVII, Schedule III of the Excise Tax Act.*

Place of Hearing: Calgary, Alberta
Date of Hearing: May 15, 1989
Date of Decision: February 2, 1990

Panel Members: W. Roy Hines, Presiding Member
Robert J. Bertrand, Q.C., Member
Kathleen E. Macmillan, Member

Counsel for the Tribunal: Danielle Bouvet
Clerk of the Tribunal: Lillian Pharand

Appearances: David Lunnen and Ronald Huyber, for the appellant
Peter Engelmann and Louis Cousineau, for the respondent

Cases Cited: *Matt's Manufacturing Ltd. v. The Deputy Minister of National Revenue for Customs and Excise (1983), 9 T.B.R. 44; Edmonton Truck Body Ltd. v. The Deputy Minister of National Revenue for Customs and Excise (1984), 9 T.B.R. 121; Alberta Institute of Technology v. The Deputy Minister of National Revenue for Customs and Excise (1984), 9 T.B.R. 367.*

Statutes Cited: *Excise Tax Act, R.C.S. 1970, c. E-13; Canadian International Trade Tribunal Act, S.C. 1988, c. 56.*

Dictionary Cited: *Black's Law Dictionary, Fifth Edition, West Publishing Co. 1979.*

Appeal No. 3097

MULLEN TRUCKING LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: W. ROY HINES, Presiding Member
ROBERT J. BERTRAND, Q.C., Member
KATHLEEN E. MACMILLAN, Member

REASONS FOR DECISION

SUMMARY

The appellant, Mullen Trucking Ltd. (Mullen), is a trucking company engaged in the transportation of freight throughout Canada and the United States. The goods at issue, the "TRIPMASTER Trip Recording System" (Tripmaster), include sensors, wiring, connectors, adaptors, a monitoring device and related hardware serving as components of a computerized fleet management system, and were purchased and installed, in 1985 and subsequent years, into trucks operated by the appellant.

The issue facing the Canadian International Trade Tribunal (the Tribunal) is whether the appellant is entitled to a refund of sales tax paid in respect of the Tripmaster pursuant to section 8, Part XVII, Schedule III of the *Excise Tax Act*¹ (the Act) on the grounds that the Tripmaster was designed to facilitate the carriage or handling of freight.

The appeal is not allowed. The Tribunal considers that the Tripmaster is designed to monitor the operation of the trucks and to provide information to improve administrative and management control over drivers and maintenance of vehicles. Due to the tenuous relationship of the Tripmaster to the facilitating of carriage and handling of freight, the system does not qualify for exemption from sales tax.

THE LEGISLATION

The relevant legislative provisions of the Act are as follows:

27(1) There shall be imposed, levied and collected a consumption or sales taxes ... 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 ...

1. R.S.C. 1970, c. E-13; now R.S.C. 1985, c. E-15, s. 68.1.

PART XVII

TRANSPORTATION EQUIPMENT

1. Highway truck tractors; trucks designed primarily for the carriage of freight ...

8. Parts and equipment, designed for permanent installation on the tax-exempt goods mentioned in sections 1, 2, 3, 4, 5, 5.1, 5.2 and 7 of this Part where, in the opinion of the Minister, the fair sale price by the Canadian manufacturer or the fair duty-paid value of the imported article, exceeds two thousand dollars per unit; all parts and equipment installed on the tax-exempt goods mentioned in sections 1, 2, 3, 4, 5, 5.1, 5.2 and 7 of this Part prior to the first use of those tax-exempt goods; except that parts and equipment designed for permanent installation or installed on the tax-exempt goods mentioned in section 1 of this Part are exempted from tax only if they are designed to facilitate the carriage or handling of freight.

THE FACTS

This is an appeal pursuant to section 51.19 of the Act, as amended, from the respondent's Notice of Decision No. 80122RE, dated October 25, 1988, dismissing the appellant's claim for a refund of sales tax paid in respect of the Tripmaster manufactured by Rockwell International and purchased by the appellant. The period of assessment is from May 26, 1986, to June 1, 1987. The claim is in the amount of \$2,770.43.

The appellant seeks a declaration that the Tripmaster qualifies for exemption from sales tax pursuant to section 8, Part XVII, Schedule III of the Act.

Although the appeal was made to the Tariff Board, it is taken up and continued by the Tribunal under section 60 of the *Canadian International Trade Tribunal Act*.²

The appellant submitted a claim on April 14, 1988, requesting a refund of federal sales tax paid in respect of the goods at issue.

The computer systems installed into the appellant's vehicles provide its head office with data by which administrative and management control may be exercised over driver and vehicle activity during trips undertaken for the carriage of freight between various areas of the United States and Canada. The appellant claims that the system increases productivity, maximizes fuel economy, reduces maintenance down-time and improves operating safety. Since management control procedures constitute activities which facilitate the carriage of freight operations and since the equipment is designed for use in general or indirect functions in carriage of freight, the system should be exempted.

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

The Department of National Revenue (the Department) informed the appellant by Notice of Determination No. CAL 28073, dated May 3, 1988, that its refund claim had been disallowed. The Department stated that the interpretation of section 8, Part XVII, Schedule III of the Act restricted the exemption to parts, equipment and accessories required in the normal operation of trucks. Accordingly, the equipment at issue did not qualify for a refund.

The appellant filed a Notice of Objection on May 10, 1988, but the Minister of National Revenue (the Minister) disallowed the claim by Notice of Decision No. 80122RE, dated October 25, 1988, on the grounds that there was, at most, a tenuous relationship between the design of the goods and facilitation of the carriage or handling of freight. Accordingly, the determination was confirmed.

THE ISSUE

The issue in this appeal is whether the Tripmaster qualifies for a sales tax exemption under section 8, Part XVII, Schedule III of the Act on the basis that it was designed to facilitate the carriage or handling of freight. If it were so designed, then the appellant is entitled to claim a sales tax refund.

The evidence presented by the appellant was in two parts. First, the appellant presented a video explaining the different characteristics of the Tripmaster which can be summarized as follows:

- the system permits reductions in operating costs through the monitoring of fuel consumption, idling time, speeding, over- and under-revving, unscheduled stopping and elapsed time;
- the data collected by the system help to prevent abuse of equipment, reduce downtime and ensure operating efficiency and safety; and
- the system identifies potential mechanical problems and facilitates proper maintenance of the trucks.

Second, Mr. David E. Olson, who had worked for the appellant for five years as Corporate Controller and who was involved with the initial decision to purchase the Tripmaster, testified on behalf of the appellant. In his testimony, Mr. Olson basically reiterated all of the characteristics of the Tripmaster mentioned above and stated, in addition, that the use of the system resulted in a reduction in operating costs of between 5 and 10 percent.

Under cross-examination, Mr. Olson admitted that the Tripmaster did not furnish any data with respect to the type of merchandise being carried and did not carry out any function with respect to these goods.

The appellant argued that the words "facilitate" and "handle" are very general words with a broad connotation. Therefore, they should be given a liberal interpretation. In support of his position, the appellant referred to the Black's Law Dictionary³ which defines these words as follows:

Facilitate. To free from difficulty or impediment ... To make easier or less difficult; free more or less completely from obstruction or hindrance; lessen the labor of.

3. 1979, Fifth Edition.

Handle. To control, direct, to deal with, to act upon, to perform some function with regard to or to have passed through one's hands, to buy and sell, or to deal or trade in ... To manage or operate.

Counsel for the appellant argued that the exemption should be interpreted as to mean making easier or less difficult or lessening the labour of the control, management or operation of transportation of freight.

Counsel for the appellant submitted that it was sufficient for the Tripmaster to be designed to facilitate the cartage of freight or to facilitate the handling of freight. The computers may be designed to fulfill one of the two functions, not necessarily both at the same time. Consequently, if the system makes the transportation of goods easier or less difficult, then the meaning of the word "facilitate" is met for the purposes of section 8, Part XVII, Schedule III of the Act.

Counsel for the respondent did not present any evidence and argued that the Tripmaster was designed to control the operation of the appellant's trucking fleet, rather than to facilitate the handling or carriage of freight. The features offered by the Tripmaster are not designed specifically for use in truck freight operations. The system could be used in a fleet of taxis, buses, tow trucks or any other vehicle fleet that does not carry freight.

Counsel for the respondent argued that the important word is "only" in section 8, Part XVII, Schedule III of the Act. Parts and equipment are exempted from tax only if they are designed to facilitate the carriage or handling of freight.

In support of this position, counsel referred to decisions of the Tariff Board (the Board). In *Matt's Manufacturing Ltd. v. The Deputy Minister of National Revenue for Customs and Excise* (1983),⁴ the question to be determined was whether or not the lube units were designed to facilitate the carriage or handling of freight as required by the final condition in section 8. At page 49 of that decision, the Board states the following:

The prime function of the lube units is to carry freight to construction sites and other remote job sites. All the components of the lube units are used directly in the carriage or handling of freight and the components and lube units are designed to facilitate that use. The lube units as constructed and installed on truck chassis by the applicant fulfill all of the requirements mentioned in Schedule III, Part XVII, sections 1 and 8.

Similarly, in *Edmonton Truck Body Ltd. v. The Deputy Minister of National Revenue, Customs and Excise* (1984),⁵ the Board was required to consider whether or not the large truck service bodies, as described in brochures and in verbal testimony, had been specifically designed to facilitate the carriage or handling of freight. The Board in finding that the service bodies were used in the carriage of freight held, at page 125, that:

The function of the service bodies is to carry equipment and goods to job sites for the erection, building or repairing of equipment in the field....

4. Appeal No. 1928, 9 T.B.R. 44.

5. Appeal No. 2032, 9 T.B.R. 121.

Counsel for the respondent concluded that, since the goods in issue are not designed specifically for use directly in the carriage or handling of freight, the appellant is not entitled to an exemption.

DECISION

In order for the goods in issue to qualify under the exemption clause, the goods must meet the following conditions:

- a) they must be parts and equipment, designed for permanent installation;
- b) their price must exceed two thousand dollars per unit;
- c) they must be installed on tax exempt goods; and
- d) they must be designed to facilitate the carriage or handling of freight.

It is admitted that the Tripmaster satisfied the first three conditions, and the Tribunal takes note of that admission and would have reached that same conclusion with respect to the three conditions. The issue to be resolved is whether or not the Tripmaster, as described in the brochure, video and testimony, has been designed to facilitate the carriage or handling of freight.

As seen in the case of *Alberta Institute of Technology v. The Deputy Minister of National Revenue for Customs and Excise*,⁶ the term "designed," as used in the wording of the last condition, relates to a deliberate intention in the mind of the producer of the system as to the nature of its use or function.

According to the evidence submitted, the Tripmaster is marketed and used as an instrument or tool to provide information to improve administrative control over driver and vehicle operations. Through a variety of reports, the information provided serves to highlight potential maintenance problems, promotes safety awareness on the part of operators, monitors driver performance and adherence to instructions and provides data for time management and fuel economy analysis. The Tribunal is of the opinion that, rather than being designed to facilitate the handling or carriage of freight, the Tripmaster is designed to provide detailed monitoring of the performance of the vehicles in which it is installed and the manner in which the vehicles are operated, irrespective of freight carriage or handling operations. The mere fact that the system is installed in trucks that carry freight does not mean that it is designed to facilitate the carriage or handling of freight. In the present case, its relationship with the carriage or handling of freight appears too tenuous, indirect and remote from the system to have been designed with that objective or purpose in mind. The evidence showed that the system could be used in conjunction with a variety of fleet operations, such as taxis or buses, that have nothing to do with the carriage or handling of freight. The Tripmaster, as designed and installed in trucks by the appellant, does not fulfill all of the requirements mentioned in sections 1 and 8, Part XVII, Schedule III of the Act.

6. (1984), 9 T.B.R. 367, p. 370.

The Tribunal, therefore, declares that the Tripmaster is not exempt from the consumption or sales tax imposed by subsection 27(1) of the Act by virtue of subsection 29(1) and sections 1 and 8, Part XVII, Schedule III of the Act.

CONCLUSION

Accordingly, the appeal is not allowed.

W. Roy Hines
W. Roy Hines
Presiding Member

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

Kathleen E. Macmillan
Kathleen E. Macmillan
Member