



Ottawa, Wednesday, March 18, 1992

Appeal No. 3107

IN THE MATTER OF an appeal heard on January 9, 1992,
under section 81.19 of the *Excise Tax Act*, R.S.C., 1985,
c. E-15, as amended;

AND IN THE MATTER OF a decision of the Minister of
National Revenue dated October 5, 1988, with respect to a
notice of objection served on May 24, 1988, under
section 81.15 the *Excise Tax Act*.

BETWEEN

ROVA PRODUCTS CANADA INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part. The Tribunal finds that the telephone cords do not qualify as " ... telecommunication wire and cable ... " as used in section 4, Part I, Schedule IV to the *Excise Tax Act*. The Tribunal finds that the wall mounted telephone jacks do qualify as "equipment and hardware ... designed for permanent installation in a system for the supply of electricity" as used in paragraph 2(f) of the *Construction Materials Sales Tax Regulations*.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

John C. Coleman

John C. Coleman

Member

Kathleen E. Macmillan

Kathleen E. Macmillan

Member

Robert J. Martin

Robert J. Martin

Secretary

UNOFFICIAL SUMMARY

Appeal No. 3107

ROVA PRODUCTS CANADA INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

At issue in this appeal is whether certain goods imported into Canada qualify for the reduced rate of sales tax pursuant to paragraph 50(1.1)(b) of the Excise Tax Act. The goods include telephone cords of various lengths having various numbers of conductors (wires) and various types of connectors at their ends. Also included are wall mounted telephone jacks that serve to connect the telephone station wiring to a telephone or other peripheral device. The appellant claims that the telephone cords qualify under section 4, Part I, Schedule IV to the Excise Tax Act as " ... telecommunication wire and cable ... " and that the telephone jacks qualified under paragraph 2(f) of the Construction Materials Sales Tax Regulations as "equipment and hardware ... designed for permanent installation in a system for the supply of electricity."

HELD: *The appeal is allowed in part. The Tribunal finds that the telephone cords do not qualify under section 4, Part I, Schedule IV to the Excise Tax Act. The Tribunal finds that the wall mounted telephone jacks do qualify under paragraph 2(f) of the Construction Materials Sales Tax Regulations.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 9, 1992
Date of Decision: March 18, 1992

Tribunal Members: Robert C. Coates, Q.C., Presiding Member
John C. Coleman, Member
Kathleen E. Macmillan, Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Janet Rumball

Appearances: Michael Kaylor, for the appellant
Brian Tittimore, for the respondent

Cases Cited: *W.T. Hawkins Limited v. The Deputy Minister of National Revenue for Customs and Excise, [1957] Ex. C.R. 152; Lovell Lighting Ltd. v. The Minister of National Revenue, Canadian International Trade Tribunal, Appeal No. 2925, June 1, 1989; Selenia Food Equipment Limited v. The Deputy Minister of National Revenue for Customs and Excise, (1988) 13 T.B.R. 139; Electrical and Electronic Manufacturers Association of Canada v. The Deputy Minister of National Revenue for Customs and Excise, (1978) 6 T.B.R. 608; Perma Tubes Ltd. v. The Minister of National Revenue, Canadian International Trade Tribunal, Appeal No. AP-89-267, August 19, 1991.*

Appeal No. 3107

ROVA PRODUCTS CANADA INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
JOHN C. COLEMAN, Member
KATHLEEN E. MACMILLAN, Member

REASONS FOR DECISION

At issue in this appeal is whether certain goods imported into Canada qualify for the reduced rate of sales tax pursuant to paragraph 50(1.1)(b)¹ of the *Excise Tax Act*² (the Act). The goods include telephone cords of various lengths having various numbers of conductors (wires) and various types of connectors at their ends. Also included are wall mounted telephone jacks that serve to connect the telephone station wiring to a telephone or other peripheral device.

The appellant claimed that the telephone cords qualify under section 4, Part I, Schedule IV³ as " ... telecommunication wire and cable.... " That section reads as follows:

Electric conducting and telecommunication wire and cable; transformers, circuit breakers and related electrical equipment designed for permanent installation in a system for the supply of electricity.

The appellant claimed that the telephone jacks qualified under paragraph 2(f) of the *Construction Materials Sales Tax Regulations*⁴ (the Regulations), which read as follows:

equipment and hardware, not provided for in section 4 of Part I of Schedule V [Schedule IV] to the Excise Tax Act, designed for permanent installation in a system for the supply of electricity;

Counsel for the appellant argued that the telephone cords in issue transmit telecommunication signals through the supply of electrical current; their connectors serving to link the cords to other telecommunication cable and wire. Counsel submitted that all electrical conducting and telecommunication wire and cable qualify for the reduced rate of federal sales tax regardless of their application. He argued that the subject goods are wire or cable, referring to dictionary definitions of "cable," "cord" and "wire." Reference was also made to synonyms for "cord." He argued that the mere addition of connectors does not change the identity or purpose of the wire or cable.

1. Formerly paragraph 27(1.1)(b).
2. R.S.C., 1985, c. E-15, as amended.
3. Formerly Schedule V, entitled Construction Materials.
4. C.R.C., Vol. VI, c. 587.

Counsel argued that the telephone jacks are permanently installed on a wall and act as a connector enabling the supply of electricity to flow from the power source (telephone company) to the peripheral equipment (e.g. a telephone) via a cord such as those in issue. Counsel referred to a dictionary definition of the word "equipment," arguing that the jacks qualify as such. Similarly, he argued that the wording of section 4, Part I, Schedule IV to the Act and paragraph 2(f) of the Regulations does not imply that the equipment need be used primarily for the supply of electricity. Rather, the supply of electricity need only be one aspect of the system of which the jack is a component.

Counsel for the respondent argued that the onus is on the appellant to establish that the goods in issue are included within the provisions allowing for a reduction in federal sales tax. Counsel argued that the telephone cords do not qualify as " ... telecommunication wire and cable ... " within the meaning of the Act as they do not qualify under the heading Construction Materials of Part I, Schedule IV. Counsel argued that the cords with their connectors are a finished manufactured product and do not form component parts of a building or other construction project. Rather, the cords serve as temporary attachments to peripheral devices, separate and apart from the building itself. Counsel argued that the courts have held that the sales tax status of a given product is to be determined at the time of sale or just prior to utilization of the product.⁵ Counsel further argued that, based on the rules of statutory interpretation and the ordinary and grammatical meaning of the words "cable," "cord" and "wire," the phrase " ... telecommunication wire and cable ... " does not encompass "telephone cords."

Counsel also argued that "telephone jacks" of the type imported by the appellant are not " ... designed for permanent installation in a system for the supply of electricity.... " Counsel argued that a telephone jack is a dedicated part of an integrated system that provides telecommunication services through the use of electrical current. As such, it is a part of a system that uses electricity to fulfil its function and not part of a system for the supply of electricity. Counsel argued that if a piece of equipment is associated more with the consumption of electricity than its supply, then it is not equipment or hardware designed for installation in a system for the supply of electricity.⁶

After considering the entire context of Part I, Schedule IV, the Tribunal concludes that it was not the intention of Parliament to include the cords in issue within the provisions of section 4. Rather, its context suggests that it includes only materials and articles that will form component parts of a building or other construction project. As stated by the Tariff Board, a predecessor of this Tribunal, in *Selenia Food Equipment Limited v. The Deputy Minister of National Revenue for Customs and Excise*:⁷

5. See, e.g. *W.T. Hawkins Limited v. The Deputy Minister of National Revenue for Customs and Excise*, [1957] Ex. C.R. 152 at 157.

6. *Lovell Lighting Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. 2925, June 1, 1989.

7. (1988) 13 T.B.R. 139.

*Thus, Part I contains an extensive list of raw materials and articles, including those that are pre-manufactured and prefabricated, that are or will be employed in the construction of buildings, various systems necessary to make buildings habitable, roads, bridges, sewage systems, railway lines and public utility systems. In short, as the heading to Part I of Schedule V [now Schedule IV] indicates, the common denominator of products listed under that Part is that they must be used in the construction of any of the projects enumerated therein; whether those projects are residential, commercial, industrial or otherwise.*⁸

This interpretation of Part I, Schedule IV is consistent with earlier decisions of this Tribunal and the Tariff Board.⁹

The Tribunal believes that Exhibit A-2, which was used to illustrate the goods in issue, can be considered a telecommunication wire or cable. However, it cannot be considered a material or article to be used as a component part in the construction of a telecommunication system within a building. Thus, it cannot be considered a telecommunication wire or cable as described in section 4, Part I, Schedule IV. The Tribunal considers such cables to be extension cords used to facilitate the use of peripheral equipment and not construction materials or articles used in building a telecommunication system.

Mr. Lloyd A. Hermelyn, who is the president of the appellant corporation, testified that certain of the telephone cords, though not produced at the hearing, can be used as part of a telecommunication system that could be permanently installed in a building depending on what application the user desired.

While the Tribunal considers such goods to be telecommunication wire or cable, it does not consider the potential permanent installation of those cords as sufficient to bring them within the terms of section 4, Part I, Schedule IV. It would need more evidence to conclude that such goods should be so classified.

With regard to the telephone jacks, the Tribunal believes that they qualify as "equipment and hardware ... designed for permanent installation in a system for the supply of electricity." The jacks form part of the physical components of a telecommunication system required for its operation. They are designed to be secured to a wall and to remain there. Uncontroverted evidence established that the telephone system, of which the jacks form a part, delivers a constant 48-volt direct current to be used by the telephone or other compatible peripheral equipment. In response to the argument advanced on behalf of the respondent, the Tribunal believes that though the jacks form part of a telecommunication system that employs electricity in order to function, they are part of the system that supplies electricity to the equipment that ultimately uses it. Peripheral equipment such as telephones are the real consumers of electricity.

8. *Ibid.* at p. 152.

9. See, e.g. *Electrical and Electronic Manufacturers Association of Canada v. The Deputy Minister of National Revenue for Customs and Excise*, (1978) 6 T.B.R. 608 at 617; *Perma Tubes Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-89-267, August 19, 1991, at p. 5.

The appeal is allowed in part. The Tribunal finds that the telephone cords do not qualify as " ... telecommunication wire and cable ... " as used in section 4, Part I, Schedule IV to the Act. The Tribunal finds that the wall mounted telephone jacks do qualify as "equipment and hardware ... designed for permanent installation in a system for the supply of electricity" as used in paragraph 2(f) of the Regulations.

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