CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, December 6, 1990

Appeal Nos. AP-89-236 and AP-90-007

IN THE MATTER OF an appeal heard on August 28 1990, under section 81.19 of the *Excise Tax Act*, R.S.C., 1985, c. E-15;

AND IN THE MATTER OF decisions of the Minister of National Revenue dated August 18, 1989 and March 27, 1990, to which notices of objection were served under section 81.17 of the *Excise Tax Act*.

BETWEEN

CHEM-SECURITY (ALBERTA) LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed in part. Machinery and apparatus sold to the appellant for use primarily and directly in the manufacture of fuel, in the development of processes for use in the manufacture of the fuel and in the development of fuel for manufacture, are sales tax exempt pursuant to paragraphs 1(*a*)(i) to 1(*a*)(iii), Part XIII, Schedule III to the *Excise Tax Act*. Materials consumed and expended by the appellant in the various operations associated with the manufacture of fuel set out in exempting paragraphs 1(*a*)(i) to 1(*a*)(iii) are equally tax exempt pursuant to paragraphs 2(*a*) to 2(*c*), Part XIII, Schedule III to the *Excise Tax Act*. Finally, the appellant is entitled to sales tax exemption on machinery, apparatus and materials purchased to detect, measure, prevent, treat, reduce or remove pollutants attributable to its manufacture of fuel pursuant to exempting paragraphs 1(b) and 2(*d*). Pursuant to paragraph 81.27 (1)(b), the Tribunal refers the appeal to the Minister for reconsideration of the assessment.

Michèle Blouin
Michèle Blouin
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

W. Roy Hines
W. Roy Hines
Member

Robert J. Martin
Robert J. Martin
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal Nos. AP-89-236 and AP-90-007

CHEM-SECURITY (ALBERTA) LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

Excise Tax Act - Sales Tax - Manufacturer - Sales tax exemption on machinery, apparatus and materials purchased by appellant and used to treat non-hazardous waste produced by others - Paragraphs 1(a), 1(b) and 2(d), Part XIII, Schedule III to the Excise Tax Act (the Act) - Statutory Interpretation - English and French versions.

Held: *The appeal is allowed in part. As the appellant manufactures fuel, it follows that machinery and apparatus sold to the appellant for use primarily and directly in the manufacture of fuel, in the development of processes for use in the manufacture of the fuel and in the development of fuel for manufacture, are sales tax exempt pursuant to paragraphs 1(a)(i) to 1(a)(iii), Part XIII, Schedule III to the Act. It further follows that materials consumed and expended by the appellant in the various operations associated with the manufacture of fuel set out in exempting paragraphs 1(a)(i) to 1(a)(iii) are equally tax exempt pursuant to paragraphs 2(a) to 2(c), Part XIII, Schedule III to the Act.*

The Tribunal also considers that exempting paragraphs 1(b) and 2(d) are restricted in their application to the pollution that the purchaser creates as a consequence of its manufacturing operations. As such the appellant is entitled to sales tax exemption on pollution-abatement machinery, apparatus and materials purchased for use in fuel manufacturing operations pursuant to exempting paragraphs 1(b) and 2(d).

Pursuant to paragraph 81.27 (1)(b), the Tribunal refers the appeal to the Minister for reconsideration of the assessment.

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*August 28, 1990*
Date of Decision:	*December 6, 1990*
Tribunal Members:	*Michèle Blouin, Presiding Member* *Charles A. Gracey, Member* *W. Roy Hines, Member*
Clerk of the Tribunal:	*Nicole Pelletier*
Appearances:	*M. Kaylor, for the appellant* *A. Préfontaine, for the respondent*
Cases Cited:	*The Royal Bank of Canada v. The Deputy Minister of National*

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Revenue for Customs and Excise [1981] 2 S.C.R. 139; Slaight Communications Inc. v. Davidson [1989] 1 S.C.R. 1038; Stubart Investments Ltd. v. The Queen [1984] 1 S.C.R 536.

Statutes Cited: *Excise Tax Act, R.S.C., 1985, c. E-15, Part XIII, Schedule III, paras. 1(a), 1(b), 1(b.1), 2(d); Special Waste Management Corporation Act, S.A., c. S-21.5; An Act to amend the Excise Tax Act and the Old Age Security Act, S.C. 1989, c. 22, s. 7.*

Other References Cited: *The Construction of Statutes, E. A. Dreidger, Second edition, Butterworths, Toronto, 1983; Le Grand Robert de la langue française 1987, Paris, France.*

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal Nos. AP-89-236 and AP-90-007

CHEM-SECURITY (ALBERTA) LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
CHARLES A. GRACEY, Member
W. ROY HINES, Member

REASONS FOR DECISION

In this case, the appellant purchased machinery and apparatus (the equipment) and various materials such as caustic soda, lime, hydrochloric acid, hydrogen peroxide, etc. (the consumables), for use in the construction and operation of a hazardous waste treatment and disposal facility. The hazardous waste that the appellant treats at its facility is caused by the manufacturing and production operations of third parties.

The appellant paid sales tax for the period of September 1, 1986, to April 30, 1989, on the purchase price of the equipment and the consumables. However, the appellant believes it is entitled to a refund of the sales tax. It claims that, for the period in issue, the equipment it purchased is sales tax exempt pursuant to paragraph 1(*b*), Part XIII, Schedule III to the *Excise Tax Act*[1] (the Act) as "machinery and apparatus sold to ... manufacturers or producers for use by them directly in the ... treatment ... of pollutants ... attributable to the manufacture or production of goods."

The appellant also claims that, for the period in issue, the consumables are sales tax exempt pursuant to paragraph 2(*d*), Part XIII, Schedule III to the Act as "materials ... consumed or expended by manufacturers or producers directly in ... the ... treatment ... of pollutants described in paragraph 1(*b*) of this Part."

On April 28, 1989, Parliament amended Part XIII, Schedule III to the Act, by adding paragraph 1(*b*.1) that grants an exemption for machinery and apparatus for use primarily and directly in the treatment or processing of toxic waste in a toxic waste treatment plant. Since that amendment, the appellant has filed claims for refunds of sales tax under this provision and has been granted the refunds from the Department of National Revenue for Customs and Excise (the Department). However, the respondent denied the refund claims for the period under consideration in this appeal saying that exempting paragraphs 1(*b*) and 2(*d*) are available only to those who treat their own waste. Hence, this appeal to the Canadian International Trade Tribunal (the Tribunal).

FACTS

1. *Excise Tax Act*, R.S.C. 1985, c. E-15.

The facts in this case have been gathered from documents submitted in evidence and from the testimony of Mr. Allan J. Wakelin, the appellant's project manager. The appellant is a wholly owned subsidiary of Bovar Inc. that, prior to April 1989, was called Bow Valley Resource Services Ltd. In 1982, the appellant was selected by the Government of Alberta to design, build and operate the first fully comprehensive system in North America for the collection, transportation, treatment and disposal of special (hazardous) waste.

The system, which is known as the Alberta Special Waste Management System (the waste management system), is located about 20 km northeast of Swan Hills, Alberta. The disposal site is called the Alberta Special Waste Treatment Centre (the treatment centre).

The facility is jointly owned by Bovar Inc. and the Alberta Special Waste Management Corporation, an Alberta crown corporation enacted pursuant to the *Special Waste Management Corporation Act*.[2]

The treatment centre has been designed to process and treat all types of hazardous waste. According to Mr. Wakelin, these range from relatively benign waste to toxic waste. The basic types of waste it receives are (i) sludges from petroleum refineries, (ii) pickling acids from steel mills, (iii) PCB fluids from transformers and (iv) cyanide solutions from mining and extraction processes. The treatment centre does not process nuclear waste, explosives or municipal waste.

When containers of waste arrive at the plant, the waste is sampled and analyzed to determine its nature and to select the appropriate treatment process. The waste is then pumped either to the 'þhys-chem" facility or the "organic tank farm." The drums are then shredded, vapours escaping from the shredded drums are captured and treated and the drums are either neutralized with special reagents, incinerated or mixed with a concrete-like product composed of lime and/or cement for subsequent secure landfill disposal in impermeable cells located at the treatment centre.

If the received waste is inorganic, it goes to the 'þhys-chem" facility. There, the waste can go through one of three processes: neutralization, precipitation or oxidation/reduction. In neutralization, acidic solutions from steel pickling operations are neutralized with lime to form a solution made up of water and a harmless salt. This solution is then injected about 6,000 ft. deep into limestone formations (i.e., deep-well injected). In precipitation, the harmful constituent of the liquid waste is made into a solid. The liquid and solid are then separated; the liquid is treated to form deep-well injection and the solid is stabilized for secure landfill disposal. Finally, in oxidation/reduction, hazardous chemical compounds such as cyanides are broken down into harmless constituents through one or more chemical reactions. Gases formed in these reactions are captured and removed, and liquids are further treated for deep-well injection.

Mr. Wakelin testified that the non-hazardous residual liquids and solids arising from the 'þhys-chem" treatments are not used by the appellant nor sold to third parties for subsequent use. They are simply disposed of in the manner described.

Approximately 70 percent of the waste processed at the treatment centre consists of organic waste. The waste, which is initially stored in the "organic tank farm," consists of filters and chemicals used in sour-gas processing, residuals from pesticide and herbicide production, PCBs, various by-

2. S.A., c. S-21.5.

products from plastic and synthetic rubber manufacture, etc. Organic waste is treated by means of high temperature (up to 1200 C) incineration.

Incineration is carried out by two incinerators acting in series. The first incinerator, called the "primary combustion chamber" or "kiln" is a refractory-lined vessel in which liquid and/or solid organic waste is placed. Most of the burning of the waste occurs in this chamber. The second incinerator, which operates at a higher temperature than the "kiln," completes the incineration process. Combustion by-products are formed when the organic waste is broken down into its constituent parts. These by-products are carbon dioxide, water vapour, ash and acid gases. The acid gases are neutralized with caustic soda to form a salt solution that is then deep-well injected. Particulate matter such as ash is stabilized for secure landfill disposal. As with the non-hazardous residual liquids and solids arising from the "phys-chem" treatments, the residual materials arising from incineration are not used by the appellant nor sold to third parties for subsequent use.

Mr. Wakelin stated that much of the organic waste that it receives can be blended to make fuel to raise the temperature in the incinerators. Following work that is done in the treatment centre laboratory, specific types of organic waste are scheduled to arrive at a particular time so that the right constituents can be blended together to make the fuel. The waste is pumped out of storage tanks in the "organic tank farm," blended together and then injected through a "nozzle" into the incinerators. Once injected, the fuel is burnt to produce heat that incinerates other, non-liquid, organic waste. The witness stated that by creating the fuel from blended organic waste, the appellant satisfies approximately half of its daily incinerator fuel requirements that would otherwise have to be made up by purchases of natural gas.

On September 3 and October 14, 1987, the appellant asked the Department whether the operation of blending organic waste at the treatment centre constituted manufacturing or production for purposes of the Act. In reply, the tax interpretation unit of the Department issued a ruling on October 21, 1987, to the effect that the operation of mixing and blending organic fluids at the appellant's treatment plant is manufacturing or producing for purposes of the Act.

On August 25, 1988, and October 25, 1989, the appellant filed refund claims for the period in issue, i.e., September 1, 1986, to April 30, 1989, for the federal sales tax portion of the purchase price of the equipment and consumables used at its facility. In the case of Appeal No. AP-89-236 pertaining to the claim filed on August 25, 1988, the claim was rejected by Notice of Determination CAL 33490 on November 15, 1988. In Appeal No. AP-90-007 dealing with the claim filed on October 25, 1989, the claim was rejected by Notice of Determination CAL 70284 on December 5, 1989. Notices of objection were filed with the Minister of National Revenue (the Minister) from both determinations but the departmental determinations were confirmed on August 18, 1989, and March 27, 1990, respectively. The primary reason for the Minister's refusal in both appeals was stated as follows:

> *[Y]ou are not eligible to purchase the equipment at issue for your plant at Swan Hills under the exemption provided in Paragraph 1(b) of Part XIII, as such waste did not result from your manufacturing or processing operations which is a requirement seen as being contemplated in that exemption provision. For similar reasons the provision of paragraph 2(d) of Part XIII would also not be applicable to your operation of treating hazardous waste acquired from others.*

The appellant appealed these decisions to the Tribunal.

THE ISSUE

The issue in this appeal is whether the equipment qualifies for exemption from sales tax under paragraph 1(*b*), Part XIII, Schedule III to the Act, and whether the consumables qualify for exemption under paragraph 2(*d*), Part XIII, Schedule III to the Act. At a more fundamental level, this appeal involves the question of whether the appellant is a manufacturer and whether these two exempting paragraphs only apply to manufacturers who are treating waste that they, themselves, have produced in their manufacturing processes. In other words, do these exempting provisions apply to the treatment of waste produced by third parties?

THE LEGISLATION

The relevant legislation to this appeal, in both official languages, follows:

SCHEDULE III

PART XIII

PRODUCTION EQUIPMENT, PROCESSING MATERIALS AND PLANS
MATÉRIEL DE PRODUCTION, MATIÈRES DE CONDITIONNEMENT ET PLANS

1. All the following:
(Tous les articles suivants :)

...
(b) machinery and apparatus sold to or imported by manufacturers or producers for use by them directly in the detection, measurement, prevention, treatment, reduction or removal of pollutants to water, soil or air attributable to the manufacture or production of goods,

(les machines et appareils vendus aux fabricants ou producteurs ou importés par eux et destinés à être directement utilisés par eux pour la détection, la mesure, le traitement, la réduction ou l'élimination des polluants de l'eau, du sol ou de l'air qui sont attribuables à la fabrication ou la production de marchandises, ou pour la prévention de la pollution qu'ils causent;)

As indicated earlier, on April 28, 1989, paragraph 1(*b*) was amended by the addition of paragraph 1(*b*.1). This amendment, which occurred after the goods in issue had been purchased, was made pursuant to *An Act to Amend the Excise Tax Act and the Old Age Security Act*.[3] Paragraph 1(*b*.1) reads as follows:

(b.1) machinery and apparatus for use primarily and directly in the treatment or processing of toxic waste in a toxic waste treatment plant;

(les machines et appareils destinés à être principalement et directement utilisés pour le traitement ou la transformation des déchets toxiques dans une

3. S.C. 1989, c. 22, s. 7.

usine destinée à ces fins;)

2. Materials, not including grease, lubricating oils or fuel for use in internal combustion engines, consumed or expended by manufacturers or producers directly in

(Matières, à l'exclusion de la graisse, des huiles de graissage ou du carburant à utiliser dans les moteurs à combustion interne, consommées ou utilisées par les fabricants ou les producteurs directement dans...)

...

(d) the detection, measurement, prevention, treatment, reduction or removal of pollutants described in paragraph 1(b) of this Part.

(la détection, la mesure, la prévention, le traitement, la réduction ou l'élimination des polluants désignés à l'alinéa 1b) de la présente partie.)

ARGUMENTS

Because paragraph 1(*b*), Part XIII, Schedule III to the Act, mentions "machinery and apparatus sold to or imported by manufacturers" and paragraph 2(*d*), Part XIII, Schedule III to the Act, deals with "materials ... consumed or expended by manufacturers" the question arises as to whether the appellant is a manufacturer within the meaning of these two sections.

The appellant acknowledges that treatment of waste does not constitute manufacturing. Nevertheless, the appellant argues that it is a manufacturer as indicated by the ruling issued on October 21, 1987, by the Department which states that the blending of organic waste to create fuel at the treatment centre is manufacturing for purposes of the Act. The appellant argues that Parliament has not placed any limitations on the extent to which a manufacturer must be involved in manufacturing or producing in order to be considered a manufacturer within paragraphs 1(*b*) and 2(*b*). It is sufficient for the appellant to demonstrate that it is a manufacturer in order to come within the meaning of the word "manufacturer" in the paragraphs in issue. Since the Department has recognized the appellant to be a manufacturer of fuel, the appellant qualifies as a manufacturer within the meaning of paragraphs 1(*b*) and 2(*d*).

In support of this proposition, the appellant relies on the comments of Mr. Justice McIntyre in the Supreme Court of Canada decision in *The Royal Bank of Canada v. the Deputy Minister of National Revenue for Customs and Excise*.[4] In this case, McIntyre, J. stated "I find it impossible to apply any restrictive definition to the term 'manufacturing' since the Act itself does not do so."

The respondent relies on the same case to argue that the appellant is not a manufacturer within the meaning of paragraphs 1(*b*) and 2(*b*). In making this assertion, the respondent relies on the following comments of Mr. Justice McIntyre:

There is no definition of manufacturing or manufacture in the Act, but I accept a definition given by Spence J. in R. v. York Marble, Tile and Terrazzo Ltd. where he said, at p. 145:

For the present purposes, I wish to note and to adopt one of the definitions cited by the learned judge ... i.e., that "manufacture is the production of articles for use

4. [1981] 2 S.C.R. 139.

> *from raw or prepared material by giving to these materials new forms, qualities and properties or combinations whether by hand or machinery".*

According to the respondent, the appellant must make some use of the non-hazardous residuals resulting from the various treatment processes at its treatment facility. The respondent argues that with the exception of the fuel made on-site, the end products of the various treatment processes (i.e., harmless gases, non-hazardous liquids and solids) are either deep-well injected or placed in landfill cells on the appellant's premises. They are not "for use." In other words, the respondent argues that the appellant is not a manufacturer in relation to its hazardous waste treatment operations and, thus, is not a "manufacturer" within the meaning of exempting paragraphs 1(*b*) and 2(*d*).

Regarding the second issue, both the appellant and the respondent agree that the key exempting provision is paragraph 1(*b*). If the appellant's goods do not qualify for exemption under this paragraph, then the appellant cannot avail itself of the exemption in paragraph 2(*d*) because it mentions "treatment .... of pollutants" described in paragraph 1(*b*).

The appellant contends that the specific language of the English version of paragraph 1(*b*) does not restrict its application only to manufacturers who are treating waste that they, themselves, have produced in their manufacturing processes. The appellant contends that had Parliament intended such a limitation to apply, it would have said so explicitly as it has done in paragraph 1(*c*), Part XIII, Schedule III to the Act, which reads as follows:

> *equipment sold to or imported by manufacturers or producers for use by them in carrying refuse or waste from machinery and apparatus used by them directly in the manufacture or production of goods or for use by them for exhausting dust and noxious fumes produced by their manufacturing or producing operations*, (Emphasis added)

The respondent argues on several grounds that the exemptions in paragraphs 1(*b*) and 2(*d*) apply only to machinery and apparatus used by a manufacturer in the treatment of pollutants that it caused in carrying out its manufacturing operations. First, the respondent contends that only the manufacturer producing its own waste can perform all the pollution control operations for which an exemption is granted, i.e., detection, measurement, prevention, treatment, reduction or removal of pollutants." According to the respondent, a third party at another location cannot prevent, detect or measure pollutants on behalf of the manufacturer that is causing the pollution.

Second, the respondent argues that the clause "*... ou pour la prévention de la pollution qu'ils causent*" in the French version of paragraph 1(*b*) explicitly links the manufacturer that purchased machinery and apparatus used in the prevention of pollution and the manufacturing operations of the purchaser. The respondent argues that the word "*ils*" in the phrase "*qu'ils causent*" cannot refer to "*des polluants*" because it is obvious that pollutants cause pollution. The respondent contends that because the exemption regarding the prevention of pollution applies only to the pollutants caused by one's own manufacturing operation, it follows that the same restriction also applies to the other pollution control operations.

Third, the respondent argues that the intention of Parliament in adopting an enactment can be determined from several sources, including the "mischief" or problem sought to be addressed. Quoting several House of Commons and Senate Committee debates regarding the Bill that would add paragraph 1(*b*) to the Act,[5] the respondent submits that the problem that Parliament wanted to address was the fact that manufacturers of goods were hampered by the imposition of federal sales tax on the purchase

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5. *An Act to amend the Excise Tax Act and the Old Age Security Act*, S.C. 1970-71-72, c. 62.

of pollution control equipment in their efforts to control pollution caused by their operations. The respondent contended that it was solely this situation that was intended to be addressed in the exempting provision.

Finally, the respondent noted the amendment to paragraph 1(*b*) of the Act by the addition of paragraph 1*(b.1)* on April 28, 1989. The respondent contended that the amendment clearly covers the appellant's situation. The respondent argued that if Parliament had considered that the treatment of toxic waste in a toxic waste treatment facility fell within the ambit of paragraph 1(*b*), it would not have enacted exempting paragraph 1(*b*.1).

In rebuttal, the appellant argued that while, at first glance, the phrase "*qu'ils causent*" could refer to either "*fabricants ou producteurs*" or "*des polluants*," the reference to "*des polluants*" is more accurate because a manufacturer or producer does not produce pollution. Rather, pollutants produce pollution. Consequently, the appellant argued that the French version does not indicate that paragraph 1(*b*) is limited in its application only to manufacturers that are treating waste that they, themselves, produced. Furthermore, the appellant contended that even if "*qu'ils causent*" refers to "*fabricants ou producteurs*," this is only in relation to the prevention of pollution because Parliament placed the pollution control operation of "*prévention*" in a category separate from the other pollution-abatement operations.

FINDING OF THE TRIBUNAL

The appellant acknowledges that the treatment of waste and the production of non-hazardous residual gases, liquids and solids does not constitute manufacturing. The respondent acknowledges that the appellant is a manufacturer of fuel for its incinerators. The Tribunal agrees with both propositions.

Accepting, as the Tribunal does, that manufacture "is the production of articles for use from raw or prepared material by giving to these materials new forms, qualities and properties or combinations whether by hand or machinery," the evidence is clear that the appellant does not manufacture useable non-hazardous waste. While the various treatment processes transform raw or prepared materials into ones that have "new forms, qualities and properties," the end results of the appellant's various processes are not "for use." It simply disposed of these materials. Thus, while the processing of hazardous waste may be useful to society in general, the appellant's processed waste are not "for use" for any purpose.

The evidence is also clear that the appellant manufactures fuel. It blends together different organic waste to create a combustible material. In turn, this material is "for use" in raising the temperature in incinerators that eliminate hazardous waste.

Given the conclusion that the appellant is a manufacturer of fuel and not a manufacturer of non-hazardous waste "for use," it is obvious that the appellant may not rely on the appellation "manufacturer" for activities not related to the production of fuel.

Exempting paragraphs 1(*b*) and 2(*d*) grant tax exempt status to machinery, apparatus and materials purchased by a manufacturer or producer for various pollution-abatement operations. Because the appellant loses the status of manufacturer as it concerns non-hazardous waste that is not for use, in the Tribunal's view, it necessarily follows that the appellant's purchases of pollution-abatement machinery, apparatus and material used other than in the production of fuel cannot qualify for tax exempt status.

While the Tribunal considers this reasoning sufficient to dispose of this appeal, the parties argued extensively that the crux of the appeal was whether the exemptions listed in exempting

paragraphs 1(*b*) and 2(*d*) regarding pollution-abatement equipment, apparatus and materials are restricted in their application to the pollution that the appellant produces as a consequence of its manufacturing operations (i.e., the manufacture of fuel) or whether these provisions also apply to waste produced by third parties as a result of their various manufacturing processes. The Tribunal considers that these paragraphs are so restricted.

In the Supreme Court of Canada decision in *Stubart Investments Ltd. v. The Queen*,[6] Mr. Justice Estey accepted the principle of statutory construction enunciated by the learned author of The Construction of Statutes,[7] E.A. Dreidger, that 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. In the Tribunal's view, while it is true that Parliament has expressly used the word "their" in a portion of exempting paragraph 1(*c*) when it has not done so in exempting paragraph 1(*b*), the words of exempting paragraph 1(*b*), when examined within the context and scheme of the Act, nevertheless convey Parliament's intention that exempting paragraph 1(*b*) applies only to pollutants caused by ones own manufacturing processes.

According to the scheme of the Act, the Tribunal considers that there are two broad categories of goods in section 1, Part XIII, Schedule III to the Act. In the first category, essentially found in paragraphs 1(*a*) to 1(*d*), Parliament requires that the goods be sold to a manufacturer or producer. Unlike in the first category, in the second broad category of goods, basically found in paragraphs 1(*e*) to 1(*n*), Parliament merely requires that the named goods listed in the various provisions be used in the ways described. Eligibility here is not dependant on whether the goods are sold to a manufacturer or producer.

The Tribunal considers that the appellant's interpretation of exempting paragraph 1(*b*) is in conflict with this scheme because it removes any meaning Parliament gave in exempting paragraphs 1(*a*) to 1(*d*) to the effect that goods must be sold to a manufacturer or producer in order to be sales tax exempt. The appellant reasons that the pollution-abatement machinery and apparatus sold to a manufacturer or producer is tax exempt as long as it is used to deal with pollution caused by anyone's manufacturing process. But this same result (tax exemption for goods used to treat some other manufacturer's pollution) is achieved without requiring the goods to be sold to a manufacturer or producer. In other words, whether or not exempting paragraph 1(*b*) contains the requirement that goods must be sold to a manufacturer or producer, the result that the appellant seeks is the same. The requirement does not add anything to the meaning of the paragraph and, by extension, removes the distinction Parliament has made between the two categories of goods listed in section 1.

In the Tribunal's view, the French version of exempting paragraph 1(*b*) is compatible with, and supports, its conclusion that this paragraph, and thus by extension, paragraph 2(*d*), applies only to pollutants caused by one's own manufacturing process. The French version of paragraph 1(*b*) contains the phrase "*les machines et appareils vendus aux fabricants ou producteurs ... et destinés à être directement utilisés par eux pour la détection, la mesure,* [etc.] *... des polluants ... ou pour la prévention de la pollution qu'ils causent. ...*"

The Tribunal considers that the word "*ils*" in the phrase "*qu'ils causent*" refers to "*fabricants ou producteurs*" (the manufacturers or producers) who have purchased the pollution control equipment and not, as the appellant contends, to "*polluants*" (pollutants). The grammatical and ordinary sense of

6. [1984] 1 S.C.R. 536.
7. Second edition, Butterworths, Toronto, 1983.

the word "*pollution*," as noted in *Le Grand Robert de la langue française*[8] is *"Dégradation (d'un milieu) par l'introduction d'agents (polluants)* (the deterioration of an area caused by the introduction of pollutants). In other words, the word "pollution" already incorporates the idea that pollution is caused by "*polluants*."

Furthermore , the Tribunal does not consider the prevention of pollution to be an exception in exempting paragraph 1(*b*). The English version, unlike the French version, places the word "prevention" amongst the other pollution-abatement operations. It does not separate the prevention of pollution in a separate clause as is found in the French version.

In the Supreme Court of Canada decision in *Slaight Communications Inc. v. Davidson*,[9] Mr. Justice Lamer enunciated the following principles of statutory construction when dealing with apparently differing official language versions of the same enactment:

> *First of all, therefore, these two versions have to be reconciled if possible. To do this, an attempt must be made to get from the two versions of the provision the meaning common to them both and ascertain whether this appears to be consistent with the purpose and general scheme of the Code.*

In the Tribunal's view, it is extremely clear from even a cursory reading of the English language version of the above-quoted portion of exempting paragraph 1(*b*) that Parliament did not intend to provide an exception regarding the prevention of pollutants. Simply put, there is nothing in the English version of the exempting provision to indicate that Parliament intended special legislative treatment for machinery and apparatus purchased for the prevention of pollution.

The Tribunal considers that this conclusion is further supported by examining the English and French versions of paragraph 2(*d*). Parliament has connected these paragraphs to exempting paragraph 1(*b*). According to these paragraphs, Parliament exempts from sales tax otherwise taxable materials provided they are used in the pollution-abatement operations listed in the paragraph. The operations mentioned in exempting paragraph 2(*d*) are exactly the same as those mentioned in paragraph 1(*b*). Significantly, the two equally authoritative language versions of paragraph 2(*d*) place the word "prevention" (*prévention* in French) amongst a listing of several other pollution-abatement operations. In other words, in paragraph 2(*d*), the prevention of pollution is not singled out for special legislative treatment.

In short, the Tribunal considers that exempting paragraphs 1(*b*) and 2(*d*) are restricted in their application to the pollution that the purchaser creates as a consequence of its manufacturing operations. As such, the appellant is entitled to sales tax exemption on pollution-abatement machinery, apparatus and materials purchased for use in fuel manufacturing operations pursuant to exempting paragraphs 1(*b*) and 2(*d*).

Furthermore, as the appellant manufactures fuel, it follows that machinery and apparatus sold to the appellant for use primarily and directly in the manufacture of fuel, in the development of processes for use in the manufacture of the fuel and in the development of fuel for manufacture, are sales tax exempt pursuant to paragraphs 1(*a*)(i) to 1(*a*)(iii), Part XIII, Schedule III to the Act. It further follows that materials consumed and expended by the appellant in the various operations associated with the

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8. *Le Grand Robert de la langue française*, 1987, Paris, France.
9. [1989] 1 S.C.R. 1038, at p. 1071.

manufacture of fuel set out in exempting paragraphs 1(*a*)(i) to 1(*a*)(iii) are equally tax exempt pursuant to paragraphs 2(*a*) to 2(*c*), Part XIII, Schedule III to the Act.

CONCLUSION

For all the foregoing reasons, the appeal is allowed in part. Pursuant to paragraph 81.27(1)(*b*), the Tribunal refers the appeal to the Minister for reconsideration of the assessment.

Michèle Blouin
Michèle Blouin
Presiding Member

Charles A. Gracey
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Member

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