CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, August 13, 1990

Appeal No. AP-89-153

IN THE MATTER OF an appeal heard on March 20, 1990, 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 March 29, 1989, with respect to a notice of objection filed pursuant to section 51.15 of the *Excise Tax Act*.

BETWEEN

MO-TIRES LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal declares that, in transactions where retreaded tires are sold from stock and casings are invoiced as separate items, Mo-Tires Ltd., as a manufacturer of retreaded tires and in accordance with subsection 27(1) of the *Excise Tax Act*, is liable for the payment of the federal sales tax calculated on the sale price as defined in subsection 26(1) of the *Excise Tax Act*.

W. Roy Hines
W. Roy Hines
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Michèle Blouin
Michèle Blouin
Member

Robert J. Martin
Robert J. Martin
Secretary

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TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-89-153

MO-TIRES LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

Excise Tax Act - Sale price - Retreaded tires - Whether the sale price of retreaded tires includes any charges made for used tires or casings.

DECISION: *The appeal is dismissed. The Tribunal declares that, in transactions where retreaded tires are sold from stock and casings are invoiced as separate items, Mo-Tires Ltd., as a manufacturer of retreaded tires and in accordance with subsection 27(1) of the Excise Tax Act, is liable for the payment of the federal sales tax calculated on the sale price as defined in subsection 26(1) of the Excise Tax Act.*

Place of Hearing:	*Edmonton, Alberta*
Date of Hearing:	*March 20, 1990*
Date of Decision:	*August 13, 1990*
Tribunal Members:	*W. Roy Hines, Presiding Member* *Arthur B. Trudeau, Member* *Michèle Blouin, Member*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Brian Roelofs, for the appellant* *Linda Wall, for the respondent*
***Cases Cited**:*	*Biltrite Tire Company v. The King, 1 D.T.C. 360; The King v. Boultbee Ltd., 1 D.T.C. 443; Lor-Wes Contracting Ltd. v. The Queen, [1986] 1 F.C. 346; Thompson v. Canada, [1988] 3 F.C. 108; The Attorney General of Canada v. Royden Young, unreported, F.C.A., July 31, 1989, Court No. A-978-88.*
***Statute Cited**:*	*Excise Tax Act, R.S.C., 1970, c. E-13, subss. 26(1), 26(5) and 27(1).*
***Memorandum Cited**:*	*ET 202-17.*
***Ruling Cited**:*	*3200/95-1.*
***Author Cited**:*	*Driedger, E.A., Construction of Statutes, 2nd ed.*
***Other Reference Cited**:*	*Commons Debates, June 23, 1966.*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-89-153

MO-TIRES LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: W. ROY HINES, Presiding Member
ARTHUR B. TRUDEAU, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

SUMMARY

The appellant is a manufacturer of retreaded tires. The transactions that are the subject of this appeal consist of certain retreaded tire sales to retailers and users. On some transactions, retreading charges and casings (on which no tax was remitted) were invoiced as separate items. Federal sales tax, which was not remitted on the casings, was assessed by the respondent in the amount of $12,800.72. The appellant filed a notice of objection to the assessment. The respondent disallowed the objection and confirmed the assessment. Hence, this appeal.

The issue in this appeal is whether the "sale price" of retreaded tires includes any charges made for casings.

The appellant argued that, under subsection 26(5) of the *Excise Tax Act* (the Act), the sale price on which tax is payable is equal to the retreading charge and, therefore, does not include tax on the casings. The respondent argued that a new manufactured product was sold and that the appellant, as a manufacturer of retreaded tires, should be taxed on the full value of the retreaded tire. Pursuant to the definition of "sale price" as found in subsection 26(1) of the Act, that value includes that of the casing.

In the Tribunal's view, the interpretation of subsection 26(5) of the Act leads to the conclusion that Parliament intended that retreaded tires be sold at a sale price equal to the retreading charge only in the case where the manufacturer retreads a tire owned by another person. In transactions, such as those in issue, where the appellant sold a retreaded tire from its own stock and made a separate charge for the casing supplied, the federal sales tax is payable on the "sale price" as defined in subsection 26(1) of the Act. Therefore, if the value of the casing is added to the sale price that the purchaser is liable to pay, that value forms part of the sale price for tax purposes.

Accordingly, the appeal is not allowed.

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THE LEGISLATION

The statutory provisions relevant to this appeal are as follows :

Excise Tax Act

26(1)[1] *In this Part,*

...

"sale price", for the purpose of determining the consumption or sales tax, means

(a) except in the case of wines, the aggregate of

(i) the amount charged as price before any amount payable in respect of any other tax under this Act is added thereto,

(ii) any amount that the purchaser is liable to pay to the vendor by reason of or in respect of the sale in addition to the amount charged as price (whether payable at the same or some other time) including, without limiting the generality of the foregoing, any amount charged for, or to make provision for, advertising, financing, servicing, warranty, commission or any other matter, ...

26(5)[2] *A person engaged in the business of retreading tires shall, for the purposes of this Part, be deemed to be the manufacturer or producer of tires retreaded by him; and tires retreaded by him for or on behalf of any other person shall be deemed to be sold, at the time they are delivered to that other person, at a sale price equal to the retreading charge.*

27(1)[3] *There shall be imposed, levied and collected a consumption or sales tax at the rate specified in subsection (1.1) on the sale price of all goods*

(a) produced or manufactured in Canada ...

THE FACTS

This is an appeal under section 51.19[4] of the Act by Mo-Tires Ltd. (Mo-Tires) to set aside the decision of the Minister of National Revenue (the Minister), No. 70306AE, dated March 29, 1989, wherein the Minister disallowed the objection made by Mo-tires from an assessment for federal sales tax.

Mo-Tires is a manufacturer of retreaded tires. Effective April 1, 1972, Mo-Tires was issued a manufacturer's sales tax licence as a manufacturer of retreaded tires. The appellant's manufacturing transactions that are the subject of this appeal consist of selling regular lines of retreaded tires of its manufacture to retailers and users. On some transactions, retreaded tires were sold and casings were invoiced to users as separate items.

On June 23, 1987, Mo-Tires received Notice of Assessment No. ALB 2263 in which it was assessed for federal sales tax not remitted on taxable sales in the amount of $10,608.32, plus

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1. R.S.C., 1970, c. E-13, as amended; now subsection 42(1), R.S.C., 1985, c. E-15.
2. R.S.C., 1970, c. E-13, as amended; now section 45, R.S.C., 1985, c. E-15.
3. R.S.C., 1970, c. E-13, as amended; now section 50, R.S.C., 1985, c. E-15.
4. R.S.C., 1970, c. E-13, as amended; now section 81.19, R.S.C., 1985, c. E-15.

$1,233.37 interest and $959.03 penalty for a total of $12,800.72 (accrued interest and penalty to June 30, 1987). The Notice of Assessment covered the sales of retreaded tires during the period from January 1, 1984, to April 30, 1987.

Mo-Tires filed a notice of objection with the Minister on August 12, 1987. The Minister issued a notice of decision on March 29, 1989, in which the objection was disallowed and the assessment confirmed. The reasons for the decision are stated as follows:

> *The Excise Tax Act provides in subsection 26(5) that a person engaged in the retreading of tires shall be deemed to be the manufacturer or producer of tires retreaded by him. The same subsection provides that where tires are retreaded by him for or on behalf of any other person, the retreaded tires are deemed to be sold, at the time they are delivered to that other person, at a sale price equal to the retreading charge. This subsection clarifies the taxable status of the process and defines the "sale price" in transactions where the contract excludes the supply of the casing by the seller.*
>
> *In other transactions where the contract is for the supply of a retreaded tire, including casing, then notwithstanding the format of the transaction or the invoicing technique, tax is payable on the "sale price" which is defined in subsection 26(1) of the Act to mean ...*

Mo-Tires appealed the Minister's decision to the Tribunal by letter dated June 1, 1989. The appellant sought a declaration from the Tribunal as to whether the "sale price" of retreading tires includes any charges made for casings.

At the hearing, Mr. Brian Roelofs, the General Manager of Mo-Tires for the last 23 years, represented the appellant and also testified on its behalf. Mo-Tires has been in the retreading business for approximately 50 years and its process of retreading tires was described in some detail. First, the tire comes into the retread plant and is inspected inside and outside to make sure that there are no structural weaknesses. Second, the old tread is buffed off and any small holes are repaired. Third, rubber cement is sprayed on the buffed tire to help hold the new tread rubber in place until the tire reaches the mold or vulcanizing pressure chamber. Fourth, the new tread is applied on the buffed tire by using the mold cure process or the pre-cure system. Fifth, the tire with the new tread is put into a large rubber envelope that is placed into a pressure chamber. The new tread becomes vulcanized to the tire. Finally, the tire is inspected and painted before leaving the retread shop.

The witness explained why, in his view, Mo-Tires should not be paying federal sales tax on casings. First, he stated that there is a significant difference in the way in which sales tax is applied to the retreaded tire and in which sales tax is applied to a new tire. Federal sales tax is paid on a new tire when it is imported or manufactured in Canada. Therefore, when a tire dealer buys a used tire and resells it, no federal sales tax is payable because the tax has already been paid. Also, when a customer trades in or exchanges a used tire, no federal sales tax is required to be paid on the used tire. As well, when a customer brings a tire to a retreader and has it retreaded, the customer pays sales tax on the retreading process, and not on the used tire.

However, the witness pointed out that Ruling 3200/95-1, entitled "Sale Price of Retreaded Tires" and issued on June 28, 1986, states that it is normal practice in this industry to make a separate charge for the casing where the customers do not provide their own casings or an acceptable exchange casing for retreading. The ruling provides as follows:

CASING CHARGES

All separate charges for casings whether invoiced at time of sale or at any other time are regarded as part of the sale price and subject to tax....

Based on this Ruling, the witness testified that if a customer buys a used tire from the appellant as a spare and goes back later to the appellant with this used tire to have it retreaded, the appellant would have to remember somehow that it sold this tire to the customer and, therefore, remit the tax on the casing and on the retreading process.

Queried by the Tribunal as to the difference between a used tire and a casing, the witness replied that there is no difference, but, depending on the demand for used tires or the amount of tread that is left, the retreader may decide to put the tire through a retreading process or may decide to sell it used.

The witness further testified that, under paragraph 6 of Memorandum ET 202-17 entitled "Retreaded Tires" and issued on November 1, 1973, the appellant is allowed, as a manufacturer, to buy tax exempt the materials used exclusively or primarily in the retreading process. Therefore, in his view, the appellant should be able to purchase used tires tax exempt.

Finally, the witness explained that, during the period of the audit, the tax was paid when the retreaded tire left the plant and was sold or transferred to the appellant's wholesale division, retail division or truck centre. According to the witness, the payment of the sales tax at the time of production is allowed by the aforementioned Ruling and Memorandum. Consequently, the appellant's divisions were all deemed to be customers and, as stated by the witness, the appellant had no way of knowing whether a particular tire went to its retail store or was exchanged with another tire or whether the retail store used it to retread a tire for someone else. In the appellant's view, the customer was the division and, therefore, the retread plant was doing nothing but "customer retreading," as called in the industry, for one of those three divisions.

Ms. Lorraine Norwood testified on behalf of the respondent. She has been a Senior Excise Auditor for the Department of National Revenue, Customs and Excise (the Departement), since 1983 and conducted the audit of Mo-Tires' file.

The witness agreed with Mr. Roelofs' description of the retreading process, but explained as follows the difference between a used tire and a casing: a used tire has nothing further done to it, whereas a casing is incorporated in the retreading process into a new product. The witness said that, during the audit, she looked at a sample of invoices for each tire line sold by the appellant. She stated that the appellant uses, in its computerized accounting system, codes to identify the different products sold and the different services provided. Tax was remitted on certain ones and not on others. She further said that, on three previous audits conducted on the appellant's files, tax was not paid on the casings, but assessments were raised and tax was subsequently paid to the Department.

According to her testimony, the Department objected in the present audit to transactions where the appellant took a used tire, retreaded it and sold it to a customer, but did not pay tax on the casings. In such a case, the invoice would show a charge for retreading and a charge for the casing; tax was paid on the retreading process, but was not remitted on the casing.

In cross-examination, the witness explained that, from an audit point of view, there was no concern about tracing back a used tire to the original tire brought in by a customer. She said that, when a used tire is sold as a used tire, no tax is payable; however, where the used tire forms part of the finished product, tax is payable on the used tire. If a customer gives in exchange a tire of the same value and quality, federal sales tax is payable on the retreading process only.

Questioned by the Tribunal as to the moment at which a used tire or casing becomes taxable, the witness replied that once it becomes a retreaded tire, it is deemed to be a new product with a new life. It is no longer a used tire. The tax is payable on the sale price, which is the total price paid. Furthermore, the witness reiterated that she was able to ascertain from the appellant's records and its coding system the transactions where the customers did not come in with their own tires, in which cases the Department assessed the tax on the casings.

THE ISSUE

The issue is this appeal is whether, under section 26 of the Act, the sale price of retreaded tires includes any charges made for the used tires or casings.

In argument, the appellant submitted that, under subsection 26(5) of the Act, the sale price on which tax is payable is equal to the retreading charge. That sale price does not include the charges made for the casings. In the appellant's view, the semi-colon inserted between the words "him" and "and" in the English version of that subsection, as opposed to a period, indicates one continuous thought. Consequently, the Act simply means that the price on which tax is payable is the price of the retreading charge, not the price of the casing.

On the other hand, the respondent argued that the real issue in this case is whether the appellant is a manufacturer or producer of goods. The respondent directed the attention of the Tribunal to subsection 27(1) of the Act and submitted that there is a sales tax on all goods produced or manufactured in Canada that is levied on the producer or manufacturer.

The respondent then argued that Mo-Tires is a manufacturer or producer because retreaded tires are manufactured goods. In the respondent's view, when the appellant retreads tires, it does not manufacture from scratch, but nevertheless produces the equivalent of a new tire. As a manufacturer of retreaded tires, Mo-Tires is, in accordance with subsection 27(1) of the Act, liable for the total amount of $12,800.72, as assessed on the sale price within the meaning assigned to that term in subsection 26(1) of the Act.

The respondent invited the Tribunal to look at what is really being sold, regardless of the invoice technique. It was the respondent's submission that a new manufactured product is being sold and that the manufacturer should be taxed on the full value of the retreaded tire. That value includes the value of the casing as being an essential component that becomes indistinguishable from the final created product.

The respondent drew the Tribunal's attention to two cases. In the case *Biltrite Tire Company v. The King*,[5] the appellant had purchased old and worn-out motor vehicle tires, had them dried, had the holes buffed and treated and had the tread removed; the tires were then patched on the inside and a new tread was applied and the tires were then heated. The Supreme

5. 1 D.T.C. 360 (S.C.R. 1937).

Court held that the tires sold by the appellant were undoubtedly "goods" within the meaning of the *Special War Revenue Act* and that the appellant was a manufacturer within the meaning of that act.

Relying on that case, the respondent suggested, first, that it is appropriate to look at how the Supreme Court approached the *Special War Revenue Act* for guidance and, second, on the basis of a statement made by Kerwin J. in that case, that it is not because the manufacturer uses something that had once been a used tire that it is not producing something new out of the component.[6]

The respondent also relied on the case *The King v. Boultbee Ltd.*[7] where the Exchequer Court held that, in the cases where the defendant merely retreads a tire for a customer, there is never a sale and, unless there is a sale, no tax is imposed; therefore, so far as this operation is concerned, the defendant is not liable for tax. However, where the customer receives a different tire from the one he brought in, there is a manufacture and sale within the meaning of the statute and the defendant is liable to be taxed.

The respondent argued that that case makes a clear distinction between the customers bringing in their own tires and the retreader using a tire from its own shop to retread. Therefore, the respondent said that it justifies a different treatment for tax purposes of the two transactions.

Finally, the respondent urged the Tribunal, in construing the Act, to focus not just on subsection 26(5), which deals with retreaders of tires, but to look at the Act as a whole.

DECISION

In this appeal, the Tribunal is being asked to decide whether the sale price of retreaded tires includes the charges made for tire casings. The Tribunal is of the view that the outcome of this appeal will largely depend upon the way in which subsection 26(5) of the Act is construed. In his work on the *Construction of Statutes*,[8] the late E.A. Driedger stated the modern principle of interpretation as follows:

> *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.*

Furthermore, in the case *Lor-Wes Contracting Ltd. v. The Queen*,[9] MacGuigan J. stated that the only principle of interpretation now recognized is a words-in-total context approach with a view to determining the object and spirit of the taxing provisions.

Taking a broad view of the Act, it appears to the Tribunal that section 27 imposes the tax on the sale price of all goods produced or manufactured in Canada. There is nothing in the Act that states that the tax applies only to goods manufactured or produced exclusively from new

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6. Supra, footnote 5, p. 361.
7. 1 D.T.C. 443 (Ex. C.R. 1938).
8. 2nd ed., p. 87.
9. [1986] 1 F.C. 346, p. 352.

materials. Goods produced or manufactured from a combination of new and used materials, or from used materials only, are therefore goods for the purpose of the Act, and the tax applies on the sale price thereof, as defined in section 26.

Various provisions have been introduced into the Act, which deem certain persons to be manufacturers or producers. Among them is subsection 26(5) that deems someone engaged in the business of retreading tires to be the manufacturer or producer of tires retreaded by him. That subsection further provides that tires retreaded by him for or on behalf of any other person be deemed to be sold, when they are delivered to that other person, at a sale price equal to the retreading charge.

Subsection 26(5) was first enacted in 1966 by *An Act to amend the Excise Tax Act* (Bill C-198).[10] Recent jurisprudence has made it clear that courts are entitled to look at the Debates of the House of Commons in order to ascertain the "mischief" or "evil" that a particular enactment was designed to correct.[11] On June 23, 1966, the then Minister of Finance, the Honourable Mitchell Sharp, moved Second Reading of Bill C-198 and stated, in response to the question raised by the Honourable Marcel Lambert (Edmonton West) as to why sales tax was now being imposed on tire retreads, as follows:[12]

> *Everyone who is engaged in production or manufacturing, whether he is remanufacturing something he owns or whether he is manufacturing a new article, is subject to sales tax. That is a well established principle of the Excise Tax Act and has been in effect for a long time. However, up until this amendment to the act the federal sales tax did not apply to services. This has sometimes caused problems in areas where services rendered to repair old commodities account for the major proportion of the value of the repaired articles. In such instances the persons repairing those commodities compete with vendors of the new commodities or of the rebuilt commodities that they already own.*
>
> *In all fairness, and this is the underlying principle of this change, the tax should apply to the charges made for services. Certainly this is the case with tire retreading.*

The Tribunal is of the view that these extracts from Hansard provide assistance in identifying the "mischief" or "evil" which that enactment was designed to address. Obviously, there were difficulties in the administration and the application of the tax on retreaded tires. Stock retreads were taxable, but custom retreads were not. The amendment was introduced to remove that inequity; the tax was being applied not only on the retreaded tires owned by the remanufacturer, but also on the value added to tires brought in by a customer to have them retreaded.

There remains to determine if Parliament intended, in eliminating the difference in the tax treatment of persons retreading tires for their customers and of persons retreading for resale or

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10. S.C. 1966, c. 40, s. 2; assented to on July 11, 1966; coming into force on March 30, 1966.
11. *Thompson v. Canada*, [1988] 3 F.C. 108 at p. 133, per Stone J.; *The Attorney General of Canada v. Royden Young*, unreported, F.C.A., July 31, 1989, Court No. A-978-88, p. 9, per Heald J.A.
12. Commons Debates, June 23, 1966, p. 6806.

trade, to declare that the sale price be equal to the retreading charge in both cases or only in the case where tires are retreaded for or on behalf of customers.

Subsection 26(5) provides in its first clause that a person engaged in the business of retreading tires be deemed to be the manufacturer or producer of tires retreaded by him. There is no disagreement between the parties that the appellant is a manufacturer within the meaning of the Act. However, that first clause is silent on the issue of what the sale price should be in respect of casings owned by manufacturers and retreaded by them.

The second clause of subsection 26(5) provides that tires retreaded by him (the person engaged in the business of retreading tires) for or on behalf of any other person shall be deemed to be sold, at the time they are delivered to that other person, at a sale price equal to the retreading charge. It is interesting to note that, when that subsection was first enacted in 1966, the two clauses were not separated by any punctuation mark in the English version, but a comma separated them in the French version. Subsequently, in the Revised Statutes of 1970, a semi-colon was placed between the two clauses in the English version while a period was inserted between them in the French version. Finally, in the Revised Statutes of 1985, a comma replaced the semi-colon in the English version and the punctuation remained the same in the French version.

The Tribunal heard considerable argument from the appellant that the punctuation makes a considerable difference in how one interprets subsection 26(5) in its entirety. In the appellant's view, the punctuation in the English version indicates one continuous thought and, consequently, the sale price should be the retreading charge only. On the other hand, the respondent has taken the position that the beginning clause is a stand-alone provision and, as such, casings owned by manufacturers and retreaded by them for subsequent sale constitute part of the sale price of the finished retreaded tire.

It seems evident to the Tribunal that the punctuation in both the French and English versions is determinative of the proper construction of subsection 26(5). The placement between the two clauses of the semi-colon and then the comma in the English version, and particularly of the period in the French version, leads to the conclusion that there are two thoughts in the provision and that Parliament clearly intended that retreaded tires be sold at a sale price equal to the retreading charge only in the case where the manufacturer retreads tires owned by another person, for that person or on his or her behalf. In the Tribunal's view, the use of the words "for or on behalf of any other person" in subsection 26(5) indicates that Parliament intended to restrict the deemed sale price to custom retreads. In that case, the tax applies to the charges made for services to a customer.

It also seems clear to the Tribunal that Parliament did not intend to deem the sale price equal to the retreading charge in the case where the manufacturer retreads tires for its own shop and resells them to a customer. In that case, the general principle underlying the Act applies: there is a manufacture and a sale within the meaning of the statute and the manufacturer is liable for the payment of sales tax on the full "sale price" of the finished retreaded tire that would include the value of the casing, if it forms part of the sale price.

Applying these conclusions to the present case, the Tribunal concludes that, in transactions where the appellant merely retreads tires owned by its customers, for them or on their behalf, and does not supply a casing, the retreaded tires are deemed to be sold at a sale price equal to the retreading charge.

In other transactions, such as those in issue, where the appellant sells a retreaded tire from its own stock and makes a separate charge for the casing supplied, the tax is payable on the "sale price" as defined in subsection 26(1) of the Act. Subsection 26(1) defines the expression "sale price" as " ... the aggregate of ... the amount charged as price ... [and] any amount that the purchaser is liable to pay to the vendor by reason of or in respect of the sale in addition to the amount charged as price...." Therefore, if the value of the casing is added to the sale price that the purchaser is liable to pay to the vendor, that value forms part of the sale price for tax purposes in those transactions.

CONCLUSION

Accordingly, the Tribunal declares that, in transactions where retreaded tires are sold from stock and casings are invoiced as separate items, Mo-Tires is, as a manufacturer of retreaded tires and in accordance with subsection 27(1) of the Act, liable for the payment of the federal sales tax calculated on the sale price as defined in subsection 26(1) of the Act, with respect to the sales of retreaded tires. Therefore, the appeal is not allowed.

W. Roy Hines
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Presiding Member

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