CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, December 4, 1990

Appeal No. AP-89-277

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

AND IN THE MATTER OF a determination of the Minister of National Revenue dated May 9, 1989, to which a notice of objection was served under section 81.15 of the *Excise Tax Act*.

BETWEEN

HOMESTEAD LOGS LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed. The appellant did not meet the conditions set out in the *Excise Tax Act* that would have allowed the company to claim the status of a small manufacturer for sales tax purposes and thus is not entitled to a refund of the sales tax that it was obligated to pay as a licenced manufacturer under the *Excise Tax Act*.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

John C. Coleman
John C. Coleman
Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Robert J. Martin
Robert J. Martin
Secretary

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Appeal No. AP-89-277

HOMESTEAD LOGS LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
JOHN C. COLEMAN, Member
KATHLEEN E. MACMILLAN, Member

REASONS FOR DECISION

ISSUE AND APPLICABLE LEGISLATION

The appellant, Homestead Logs Ltd. (Homestead), is seeking a refund of the federal sales tax that it paid on sales between June 1, 1978, and December 31, 1988, while operating as a licenced manufacturer under the *Excise Tax Act* (the Act). Section 54 of the Act requires every manufacturer to apply for a federal sales tax licence, subject to certain provisions. The same section authorizes the Governor in Council to make regulations exempting certain classes of small manufacturers from payment of sales tax and from the requirement to operate under a licence. Paragraph 2(1)(*a*) of the *Small Manufacturers or Producers Exemption Regulations*[1] (the Regulations) exempts the following class of manufacturers:

> *(a) manufacturers, other than those who elect to operate under a licence, who sell goods of their own manufacture that are otherwise subject to consumption or sales tax or who manufacture goods for their own use that are otherwise subject to consumption or sales tax, if the value of such goods sold or manufactured for their own use does not exceed $50,000 per year; ...* (Emphasis added)

The issue in this appeal is whether Homestead is entitled to a refund of the federal sales tax that it paid in the years subsequent to the enactment of the small manufacturers regulations on June 1, 1978, on the basis that its taxable sales in those years never exceeded $50,000.

FACTS

The appellant, Homestead, is a manufacturer of Ontario red pine logs for use in constructing log buildings. On March 13, 1974, the appellant applied for, and was issued, a manufacturer's sales tax licence. In a letter from Revenue Canada dated August 3, 1978, the appellant was advised of new regulations respecting small manufacturers and given the option to elect, in writing, to continue to operate under its licence. The letter stated that:

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1. SOR/82-498, as amended. Formerly, *General Excise and Sales Tax Regulations*, C.R.C., c. 594, as amended.

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> *... effective June 1, 1978, ... a licensed manufacturer whose sales volume is less than $50,000.00 per annum has the option of either having its licence cancelled or continuing to operate under licence.* (Emphasis added)

Mr. M.G. Barrington, Vice-President of Homestead, testified that his understanding of the letter was that a company's total sales, including both domestic and export sales, must not exceed the $50,000 limit in order for a company to claim the tax status of a small manufacturer. While Homestead's sales of logs in Canada, which constituted its total taxable sales, did not exceed the monetary limit, the limit was exceeded when the company's export sales were included in the amount of total sales. On this basis, Mr. Barrington determined that his company was not eligible to take advantage of the Regulations, and elected to continue operating under licence.

In January 1989, the Excise News carried an article that asked manufacturers "Should You Cancel Your Licence?" Mr. Barrington contacted the staff of Revenue Canada to consult with them on this issue with the result that he requested cancellation of the company's manufacturer's licence in early February 1989. An audit of the company was conducted on March 2, 1989, and the licence was cancelled effective December 31, 1988.

ARGUMENTS

Mr. Barrington, representing the appellant, states that he was misled by the letter from Revenue Canada, as the letter did not state that it was total taxable sales that could not exceed the $50,000 limit. With this information, he states that he would probably have made a different election. In any event, he argues, a decision in this case should be made on the basis of the intent of the Act. This, he claims, is to exempt from the payment of federal sales tax those small manufacturers whose taxable sales fall below the monetary limit. As the company's annual sales of manufactured logs never exceeded the $50,000 limit authorized in the Regulations, the appellant should be able to claim a refund of the sales tax that it remitted after the date of the implementation of the Regulations in June 1978.

The respondent argues that the appellant is not entitled to a refund of the sales tax that it was obligated to pay as a licenced manufacturer under the Act. Further, counsel states that the appellant did not meet the conditions set out in the Act and under the Regulations that would have allowed the company to claim the status of a small manufacturer for sales tax purposes. In order to qualify as a "small manufacturer" under the regulations prescribed by section 54 of the Act, a manufacturer must satisfy the following three conditions: (a) it must not elect to operate under a licence; (b) it must sell taxable goods of its own manufacture; and (c) the value of the goods sold or manufactured for its own use may not exceed $50,000 per calendar year. The respondent argues that the appellant did not meet the first condition as it was a federal sales tax licence holder and, therefore, cannot claim exemption from the payment of sales tax as a small manufacturer.

The respondent states that the appellant is, therefore, not entitled to a refund of taxes properly paid under the *Excise Tax Act* although the appellant might wish to seek other remedies under common law. In response to questions from the Tribunal, counsel acknowledged that alternative avenues of relief might be available to the company through other Acts of Parliament, such as the *Financial Administration Act.*

FINDING OF THE TRIBUNAL

The Tribunal has carefully considered the circumstances of this case and the arguments of the parties and has come to the conclusion that it has no power under the *Excise Tax Act* to grant the relief requested by the appellant. The Tribunal agrees that the letter of August 3, 1978, was not as clear as it might have been regarding the implications of the taxpayer's election to continue operating as a licenced manufacturer. It seems quite likely that with a better appreciation of the tax regulations, Homestead would have elected to cancel its manufacturer's sales tax licence at a much earlier date. However, as was recognized by the appellant's vice-president, the obligation to obtain the proper information on the application of the law rests with the taxpayer. Indeed, the letter of June 1978 does make direct reference to the small manufacturers regulations.

The law with respect to this case is clear. Under section 54 of the Act, every manufacturer or producer must apply for a federal sales tax licence, unless it is able to take advantage of certain provisions, such as the *Small Manufacturers or Producers Exemption Regulations*. The appellant applied, and was issued a manufacturer's sales tax licence and did not elect to cancel that licence until some time in 1989. As a licenced manufacturer, the appellant did not meet the conditions set out in the Regulations for exemption from the payment of sales tax as a small manufacturer. As the Tribunal must apply the law as it is set out in the *Excise Tax Act*, it is obliged to dismiss the appeal. This does not prevent the appellant from seeking relief under another act.

CONCLUSION

The appeal is dismissed. The appellant did not meet the conditions set out in the *Excise Tax Act* that would have allowed the company to claim the status of a small manufacturer for sales tax purposes and thus is not entitled to a refund of the sales tax that it was obligated to pay as a licenced manufacturer under the Act.

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