



Ottawa, Tuesday, February 4, 1992

Appeal No. AP-90-001

IN THE MATTER OF an appeal heard on November 12, 1991, under section 81.19 of the *Excise Tax Act*, R.S.C., 1985, c. E-15;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated January 12, 1990, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

ÉLECTRICITÉ STANDARD INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal declares that the traction cables, disconnect switches, cable lugs and cadweld exothermic connectors in issue do not qualify for tax exemption as "equipment specially designed for movement on railway tracks" pursuant to section 3, Part XVII, Schedule III to the *Excise Tax Act*.

John C. Coleman
John C. Coleman
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Michèle Blouin
Michèle Blouin
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-001

ÉLECTRICITÉ STANDARD INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This appeal deals with whether equipment and cables qualify for tax exemption as "equipment specially designed for movement on railway tracks" pursuant to section 3, Part XVII, Schedule III to the Excise Tax Act.

HELD: *The appeal is dismissed.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 12, 1991
Date of Decision: February 4, 1992

Tribunal Members: John C. Coleman, Presiding Member
W. Roy Hines, Member
Michèle Blouin, Member

Counsel for the Tribunal: Clifford Sosnow

Clerk of the Tribunal: Janet Rumball

Appearances: Colin R. Kingsford, for the appellant
Alain Lafontaine, for the respondent

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ÉLECTRICITÉ STANDARD INC.

Appellant

and

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Respondent

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
W. ROY HINES, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

The issue in this case is whether equipment, which provides electricity to the collector rails of the Métro (subway) system in Montréal, is "equipment specifically designed for movement on railway tracks" pursuant to section 3, Part XVII, Schedule III to the *Excise Tax Act* (the Act). The English version of this provision reads as follows:

Railway locomotives and railway rolling stock including equipment specially designed for movement on railway tracks; rail flaw detector apparatus for testing rail in railway tracks.

The French version of this paragraph provides:

Locomotives et matériel ferroviaire roulant y compris le matériel spécialement conçu pour être déplacé sur des rails de chemin de fer; appareils servant à détecter les défauts des voies de chemin de fer.

In 1985, the appellant signed a contract with the Communauté urbaine de Montréal (CUM) for the supply and installation of electrical products in the CUM's extension to the Métro system. These products consist of traction cables, disconnecting switches and accessory materials.

The appellant completed the contract and filed a refund claim (in the amount of \$13,427.72) for federal sales tax paid on the purchase of the equipment in issue. The appellant claimed that the goods are sales tax exempt, pursuant to the above-noted legislative provision. Both the officials of the Department of National Revenue for Customs and Excise (Revenue Canada) and the Minister of National Revenue (the Minister) denied the claim. The appellant then appealed the Minister's decision to the Tribunal.

Mr. Louis Melamed, the cost estimator for the contract in question, testified on behalf of the appellant at the hearing of the appeal. According to the witness, the subject goods were used in the following manner. At each Métro station, there is a rectifier that transforms incoming 15,000-V current to 750-V current. The traction cables in issue, which were specifically designed for the Métro extension contract, are exclusively used to transmit this electric current through the disconnecting switches and, thence, to collector rails. In other words, they are specialized power lines.

Each individual subway car has a "collector" that, as the name implies, moves along the collector rails and "picks" up the current from the rails. The electrical energy is then transferred from the collectors to an electric motor located on each subway car.

The witness also stated that the disconnect switches function much like a home light switch. It is used to connect/disconnect the flow of electrical current from the Métro station rectifier to the collector rails. The accessory materials in issue are called "terminations" and are used to "terminate" the cables between the rectifier and the disconnecting switches, and between these switches and the collector rails.

Mr. Melamed testified that the sole function of these products is to supply electric power to the Métro cars. He said that, in fact, the Métro cars would not work without the equipment in issue. He also stated that none of the goods in issue move on the subway tracks. Indeed, they are immovable. Rather, they are designed to make the Métro cars move on the subway tracks.

According to the appellant, the exempting paragraph in issue must be interpreted according to Parliament's intention. Parliament could not have intended the exemption to be limited solely to equipment that moves on railway tracks. Such equipment is already subsumed under the phrase "railway locomotives and railway rolling stock." In other words, accepting such a narrow interpretation of the exempting paragraph would render redundant the phrase "equipment specially designed for movement on railway tracks."

The appellant submitted that Parliament intended to include within the phrase "equipment specially designed for movement on railway tracks" goods that do not move along railway tracks, but nevertheless are integral to the movement of equipment along those tracks. The goods in issue form part of the "energy plant" required for movement of the subway cars and, as such, are "equipment specially designed for movement on railway tracks."

The respondent argued that in order for the goods to be sales tax exempt, two conditions have to be met. First, the goods must be "equipment." The respondent contended that they cannot be so characterized.

More importantly, even if the goods are "equipment," the legislation requires that they also be "for movement on railway tracks," not "for movement of equipment on railway tracks." In other words, the respondent submitted, it is irrelevant whether or not equipment is designed to make other equipment move on railway tracks. The equipment has to be specifically designed to move on railway tracks. The respondent submitted that the French version of the exempting paragraph makes this point clear. The respondent further argued that Parliament intended that the phrase "equipment specially designed for movement on railway tracks" include flat cars, box cars, cabooses and track maintenance equipment.

After considering the evidence and argument of the parties, the Tribunal concludes that the appeal must be dismissed. Essentially, this case turns on the scope of the phrase "equipment specially designed for movement on railway tracks" in the exempting paragraph in issue. In order to determine whether this phrase can be defined to include the subject goods, the Tribunal has examined the legislative context of section 3, Part XVII, Schedule III, and the equally authoritative French version of this exempting provision.

Part XVII is entitled "Transportation Equipment." It includes a wide variety of items, such as highway truck tractors, truck trailers, railway locomotives and railway rolling stock, motor vehicles and trackless train systems designed for passenger transportation, buses or vans equipped for transporting handicapped persons, school buses, passenger aircraft, air cushion vehicles designed to transport passengers, ships and other marine vessels.

As the heading "Transportation Equipment" under Part XVII implies, the Tribunal considers that the unifying theme of goods located under this part is that the equipment mentioned therein is itself used to transport goods or people. Interpreting section 3, Part XVII in a manner consistent with this statutory context, it follows that Parliament intended the word "equipment" in the phrase "equipment specially designed for movement on railway tracks" to mean equipment that itself is specially designed to transport goods or people by means of railway tracks.

The French version of section 3, Part XVII is consistent with the English version and the general scheme of Part XVII outlined above. The French version of "equipment specially designed for movement on railway tracks" states "*le matériel spécialement conçu pour être déplacé sur des rails de chemin de fer.*" According to the French version, the phrase in issue is limited to equipment which has been specially conceived for the purpose of being moved (*pour être déplacé*) on railway tracks.

In view of the foregoing statutory limitation imposed by section 3, Part XVII, Schedule III to the Act, and given that none of the goods in issue move on the Métro subway tracks, the Tribunal considers that the appeal must fail. The appeal is dismissed.

John C. Coleman
John C. Coleman
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Michèle Blouin
Michèle Blouin
Member