CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, May 20, 1992

Appeal No. AP-90-142

IN THE MATTER OF an appeal heard on March 4, 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 September 14, 1990, with respect to a notice of opposition filed under section 81.17 of the *Excise Tax Act.*

BETWEEN

LES CARRIÈRES DUCHARME INC. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed. The guillotined blocks produced by the appellant constitute rubble within the meaning of section 4, Part X, Schedule III to the *Excise Tax Act*.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Desmond Hallissey
Desmond Hallissey
Member

Robert J. Martin
Robert J. Martin
Secretary

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-90-142

LES CARRIÈRES DUCHARME INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The appellant operates a quarry from which it extracts bur stone, also called siliceous sandstone. The extraction is done by dynamiting the layered rock. Large rocks are then taken to a guillotine which again breaks up the rock into uneven blocks. The issue is to determine whether the guillotined blocks are exempt from federal sales tax as rubble, in accordance with section 4, Part X, Schedule III to the Excise Tax Act.

***HELD**: The appeal is allowed. The Tribunal does not accept the respondent's argument that the criteria relating the words "manufacturing" and "production," as set forth in Her Majesty the Queen v. York Marble, Tile and Terrazzo Limited, apply in this instance. The application of the criteria of the York Marble decision would amount to imposing a further condition that does not exist in the exemption provision. The Tribunal finds that the administrative decisions of the Minister of National Revenue, Customs and Excise, acknowledging a cutting operation at the quarry site and still granting the exemption as rubble under Part X, Schedule III to the Excise Tax Act, are not contradicting the exemption provision. On the contrary, such an interpretation is wholly compatible with the dictionary definitions of the word "rubble," that being unevenly sized rock.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*March 4, 1992*
Date of Decision:	*May 20, 1992*
Tribunal Members:	*Arthur B. Trudeau, Presiding Member* *W. Roy Hines, Member* *Desmond Hallissey, Member*
Counsel for the Tribunal:	*Gilles B. Legault*
Clerk of the Tribunal:	*Dyna Côté*
Appearances:	*Claude P. Desaulniers, for the appellant* *Christine Hudon, for the respondent*

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-90-142

LES CARRIÈRES DUCHARME INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
W. ROY HINES, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) with respect to a decision of the Minister of National Revenue (the Minister).

The appellant operates a quarry from which it extracts bur stone, also called siliceous sandstone. On February 17, 1989, the appellant requested a refund of sales tax in the amount of $134,646 related to the sale of guillotine-cut rock. On September 15, 1989, the application was rejected on the grounds that the rock-cutting operation in question was a taxable manufacturing operation. On September 14, 1990, the Minister confirmed that decision.

The issue is to determine whether the bur stone extracted from the appellant's quarry, and then broken up using a guillotine at the site, is exempt from federal sales tax as rubble, in accordance with section 4, Part X, Schedule III to the Act.

Mr. Serge Ducharme, Vice-President of the appellant company, testified at the hearing. He explained that the rock extracted from the appellant's quarry is used in the exterior covering and landscaping of homes. The rock is in layers or stratified banks. It is extracted by dynamiting in order to dislodge the layers that can vary in height from 1 in. to 14 in. After the dynamiting, the small- and medium-sized rock is removed manually from the quarry. The thinnest is used for patio stones, the medium-sized for low walls and the largest for exterior coverings. The rocks at issue are the large ones (length and width) that can vary in height. Given their size, they cannot be handled manually. They are therefore trucked to a plant on the quarry site and are then taken to a guillotine to be broken into blocks of 4 to 6 in. in width and 18 to 36 in. in length, with a height varying between 2 and 12 in. depending on the original height of the rock layer. The guillotine is a machine which, using a hydraulic mechanism, puts pressure on the rock in order to break it into uneven pieces. The blocks are then sold as guillotined blocks. They are used in the construction of low walls, sidewalks and exterior coverings of houses.

1. R.S.C., 1985, c. E-15, as amended.

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

Mr. Michel Régimbald, an auditor for the Department of National Revenue, Customs and Excise (Revenue Canada), testified for the respondent. He helped prepare the notice of determination which rejected the appellant's application for refund. When the application for refund was submitted, Mr. Régimbald visited the quarry site. He judged the guillotine operation to be a transformation operation because the rock was placed in the machine in a specific way. In his opinion, the guillotine therefore constituted a production machine that manufactured a relatively standard product. He added that the guillotine was acquired exempt from sales tax as production material in accordance with Part XIII, Schedule III to the Act. Under cross-examination, Mr. Régimbald indicated that the guillotined blocks were subject to the sales tax because of the additional working of the rock arising from the use of the guillotine.

Counsel for the appellant summarized the evidence presented to the Tribunal during his arguments. In his opinion, the evidence showed that the rock in question is placed in the guillotine in order to break it into sizes for easier transport and handling, not to give it specific shapes and sizes. The guillotined rock is neither sawn nor sized. Instead, it is broken unevenly; the guillotined block that results from this process will require, in some cases, further working by the mason who uses it. He argued that this does not change the fact that guillotined rock is rubble within the meaning of section 4, Part X, Schedule III to the Act. Indeed, the term "rubble" is not defined in the Act. Counsel claimed that we must therefore rely upon the ordinary meaning of this word. The Petit Larousse illustré[2] and Webster[3] dictionaries define the words "*moellon*" (in the French version of the Act) and "rubble" as fragmented or rough broken rock, while the Dictionnaire nord-américain de la langue française[4] refers to small-sized rock or field stones.

Counsel also cited two administrative decisions by Revenue Canada. These decisions granted the exemption in situations involving an operational process similar in all respects to that described in the evidence. Counsel claimed that these decisions added an administrative interpretation which, based on the ruling of the Supreme Court of Canada in *Harel v. Deputy Minister of Revenue (Quebec)*,[5] must be taken into consideration since it is not contrary to the wording of the Act. Counsel for the appellant concluded by stressing that any possibility of doubt as to whether the guillotined blocks should be subject to the tax should weigh in the appellant's favour.

Counsel for the respondent claimed that the manageability of the rock was the only common factor in all of the definitions given to the word "rubble." The rock in question does not acquire this manageability until after it has been transformed into guillotined blocks. A guillotined block does not have the same dimensions as rubble in its natural state. Moreover, the appellant's price list (Exhibit B-1) shows that guillotined blocks are more expensive than other products that can be used for the same purposes. According to counsel, this shows that the working of these blocks by the guillotine sets them apart from ordinary rubble.

---

2. Petit Larousse illustré 1985, Paris, Librairie Larousse, 1985, p. 647.
3. Webster's Third New International Dictionary, U.S.A., Merriam-Webster Inc., 1986, p. 1983.
4. Dictionnaire nord-américain de la langue française, Montréal, Beauchemin, 1986, c1979, p. 608.
5. [1978] 1 S.C.R. 851.

Counsel further argued that the administrative decisions by Revenue Canada did not have interpretative value and that it is preferable when interpreting the Act to rely on the principles in *Her Majesty the Queen v. York Marble, Tile and Terrazzo Limited.*[6] In that case, the Supreme Court had to determine whether certain operations carried out on marble tiles meant that they were "manufactured" or "produced" in Canada, in which case they would be subject to the sales tax under paragraph 30(1)(*a*) of the *Excise Tax Act*.[7]

Counsel relied first on the passage in *York Marble* in which the Court stated that the sand, gravel, rubble and field stone could not be considered manufactured or produced in spite of the fact that Parliament had decided to include them in the part of the Act relating to exemptions. She therefore argued that there could be goods included in Schedule III which, like rubble, are not manufactured or produced. Counsel then submitted that the criteria set forth in *York Marble* to determine whether manufacturing or production had taken place also applied to this case. She claimed that the use of the guillotine in the process to produce the guillotined blocks gave, to use the expression of the Court now deemed to be jurisprudence, "new form, qualities and properties" to the rock, and that consequently manufacturing within the meaning of the decision had taken place. She also stated that the simple fact of submitting the rock to the guillotine was enough for there to have been production within the meaning of the same decision. Counsel concluded that this manufacturing or production meant that the guillotined blocks are not rubble and, consequently, not entitled to the related exemption.

Counsel for the respondent concluded by stating that the exemptions identified in Part X, Schedule III to the Act indicate that the legislator was circumspect as to what could be exempted and as to the degree of transformation such goods could undergo and still remain within the scope of the exemption. For this reason, the exemption for the blast furnace slag and boiler slag mentioned in section 6 of Part X is limited to products not further processed than crushed and screened. In her opinion, the transformation of the rock into guillotined blocks must be interpreted in the same spirit.

In order to place the debate in the correct context, the Tribunal felt that it was first necessary to recall the exemption mechanism of Schedule III to the Act. Firstly, section 50 of the Act imposes a sales or consumption tax on the sale of: (1) goods manufactured in Canada; (2) goods imported into the country; and (3) goods sold between persons under very specific circumstances. Subsection 51(1) of the Act then exempts the goods listed in Schedule III from the sales tax imposed in section 50. Since section 50 does not apply only to goods manufactured or produced in Canada, but also to those imported or sold under specific circumstances, there is no reason to conclude that the goods listed in Schedule III have necessarily been manufactured or produced.

In reality, the only conclusion that can be drawn from the inclusion of an item in Schedule III is that it is considered "goods" within the meaning of the Act. "Goods" are nothing but "*chose[s] mobilière[s] pouvant faire l'objet d'un commerce, d'un marché*"[8] (properties that

---

6. [1968] S.C.R. 140.
7. R.S.C., 1952, c. 100, today paragraph 50(1)(*a*) of the Act.
8. Le Petit Robert 1, Montréal, Canada, Les Dictionnaires ROBERT-CANADA S.C.C., 1988,

can be traded, sold - translation). This definition is wholly in keeping with the purpose of Part VI of the Act which is to impose a sales or consumption tax. The Tribunal finds that it is necessary to keep firmly in mind the exemption mechanism and the purpose of the Act when interpreting the passage of *York Marble* on which counsel for the respondent bases her first argument. In this context, it is evident that the Supreme Court merely stated that it was difficult to imagine that the sand, gravel, field stone and rubble listed in Schedule III could be produced, manufactured or even imported. However, the Court never stated that these items, and rubble in particular, could not be goods within the meaning of the Act. Since rubble is a "good," the Tribunal is of the opinion that it is exempt under Schedule III, regardless of its state, that is, whether it is manufactured or not, as long as it meets the terms of the exemption provision.

The Tribunal is also unable to accept the respondent's argument that the criteria of "manufacturing" and "production" in *York Marble* apply. The Tribunal agrees with the respondent with respect to the new form, quality and properties that the guillotined blocks acquire. But in this instance, the Tribunal is dealing with an exemption provision that has nothing to do with the taxing provision with which the Supreme Court dealt in its case. The simple inclusion of "rubble" in section 4, Part X, Schedule III to the Act does not require the application of the criteria identified by the Court to determine whether there has been manufacturing or production. If the respondent's claims were to be accepted, they would lead to the imposition of a further condition that simply does not exist. The Tribunal therefore finds that its only task is to determine the meaning of the word "rubble" and whether the guillotined blocks are covered by such a definition.

After examining the exemption provision and the evidence, the Tribunal finds that the guillotined blocks constitute rubble within the meaning of the Act to the same degree as the manageable rocks produced by dynamiting the rock layers. Firstly, there is nothing in the Act that prohibits the goods resulting from the guillotine operation from being considered rubble. Secondly, the ordinary meaning of "rubble" and the administrative interpretation of Revenue Canada confirm, given the evidence gathered, that the guillotined blocks are rubble. The Petit Larousse illustré[9] dictionary defines "*moellon*" as "*Pierre, non taillée ou grossièrement taillée, de petites dimensions*" (rock, unsized or unevenly sized, of small dimensions - translation), and the evidence shows that guillotined blocks are "*grossièrement taillée*" (unevenly sized - translation). The Petit Robert[10] mentions that "*moellon*" is a "*Pierre de construction maniable en raison de son poids et de sa forme*" (a construction stone manageable because of its size and shape - translation); based on the testimony of Mr. Ducharme, the guillotine operation is simply to make the rock manageable, and this, the Tribunal finds, is achieved by the rock's weight and the form that it acquires. Moreover, the two administrative decisions of Revenue Canada cited by the appellant grant the exemption as rubble under Part X of Schedule III in spite of the rough cutting that is done at the quarry site. The Tribunal finds that these decisions are not contrary to the exemption provision and that, quite the opposite, they are interpretations strongly in keeping with the ordinary meaning of the word "rubble."

---

p. 1213.

9. *Supra*, footnote 2.

10. *Supra*, footnote 8.

For these reasons, the appeal is allowed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Desmond Hallissey
Desmond Hallissey
Member