

Ottawa, Wednesday, January 26, 1994

Appeal No. AP-90-113

IN THE MATTER OF an appeal heard on August 13, 1993,
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 March 14, 1990, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

MICROTEL LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-113

MICROTEL LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant manufactures computer-controlled telephone switching equipment and connection cables for attachment thereto. The issue in this appeal is whether the connection cables are construction materials within the meaning of section 4 of Part I of Schedule IV to the Excise Tax Act.

HELD: *The appeal is allowed. At the hearing, the parties agreed that the goods in issue are cables used in the supply of electricity. In fact, counsel for the respondent's sole contention was that the goods in issue were not part of a construction project, which, allegedly, is an essential condition of the provision allowing for a reduced rate of sales tax. However, the Tribunal finds that section 4 of Part I of Schedule IV to the Excise Tax Act does not require that the connection cables in issue be incorporated into a construction project.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: August 13, 1993

Date of Decision: January 26, 1994

Tribunal Members: Sidney A. Fraleigh, Presiding Member

W. Roy Hines, Member

Charles A. Gracey, Member

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Janet Rumball

Appearances: Michael Kaylor, for the appellant

Frederick B. Woyiwada, for the respondent

Appeal No. AP-90-113

MICROTEL LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
W. ROY HINES, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of a determination that disallowed a refund application filed by the appellant. The determination was confirmed by the Minister of National Revenue; hence, this appeal before the Tribunal.

The appellant manufactures computer-controlled telephone switching equipment and connection cables for attachment thereto. The connection cables are manufactured in various lengths from cables purchased by the appellant. The issue in this appeal is whether the connection cables are construction materials within the meaning of section 4 of Part I of Schedule IV to the Act, which reads as follows:

4. Electric conducting and telecommunication wire and cable; transformers, circuit breakers and related electrical equipment designed for permanent installation in a system for the supply of electricity.

It is not at issue that the connection cables are telecommunication cables. In fact, counsel for the respondent's sole contention was that those cables were not incorporated into a construction project, which, he argued, is an essential condition of the provision allowing for a reduced rate of sales tax.

Given the parties' admission, the Tribunal is of the view that the Federal Court of Appeal's decision in *Chateau Manufacturing Limited v. The Deputy Minister of National Revenue for Customs and Excise*² becomes of prime importance in resolving this matter. In the *Chateau* case, the issue was whether structural and fabricated metal, sold at retail in kit form was excluded from section 21 of Part I of Schedule V to the Act, as it read then. The Federal Court of Appeal stated that the language used in section 21 was common language bearing a plain meaning and that there was no reason for not giving those words the broadest meaning possible consistent with the context in which they were found.³ In its examination of the context, the Federal Court of Appeal gave more weight to the enumeration of the different articles listed in Part I of Schedule V to the Act than to its actual heading, "Construction Materials." Since Schedule V to

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

2. 6 C.E.R. 100; Federal Court of Appeal, File No. A-797-80, December 9, 1983.

3. *Ibid.* at 102.

the Act included many items which could not be said to be construction materials intended to be assembled on a construction site, the Federal Court of Appeal concluded that the context of Schedule V did not exclude the goods in issue sold at retail in kit form. The Tariff Board's decision in *G.H. Poulin Contractor Limited v. The Deputy Minister of National Revenue for Customs and Excise*⁴ is essentially the same, as the Tariff Board concluded that the heading of any Part in the Schedule is not limiting, but intended for ease of reference.⁵

The Tribunal also carefully examined the facts and reasons for its decision in *Perma Tubes Ltd. v. The Minister of National Revenue*⁶ and the Tariff Board's decision in *Selenia Food Equipment Limited v. The Deputy Minister of National Revenue for Customs and Excise*.⁷ Counsel for the respondent argued that those cases stand for the proposition that the goods in issue must be part of a construction project. The Tribunal notes that, contrary to the case at hand, the provisions at issue in those two cases specifically provided for the installation of goods in buildings or other construction projects.

In light of the above-mentioned decisions, it is clear that, when Parliament intended to limit the scope of any section of Part I of Schedule IV to the Act, it did so by referring to specific construction projects.

Given the absence of any condition in the first phrase of section 4 of Part I of Schedule IV to the Act that the connection cables must be incorporated into a construction project, the Tribunal allows the appeal.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

W. Roy Hines

W. Roy Hines
Member

Charles A. Gracey

Charles A. Gracey
Member

4. (1985), 10 T.B.R. 170.

5. *Ibid.* at 179.

6. Appeal No. AP-89-267, August 19, 1991.

7. (1988), 13 T.B.R. 139.