

Ottawa, Tuesday, July 27, 1993

Appeal No. AP-91-030

IN THE MATTER OF an appeal heard on March 3, 1993,
under section 81.19 of the *Excise Tax Act*, R.S.C. 1985,
c. E-15;

AND IN THE MATTER OF decisions of the Minister of
National Revenue dated February 14, 1991, with respect to
notices of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

**PACCAR OF CANADA LTD.,
PETERBILT OF CANADA DIVISION**

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

John C. Coleman
John C. Coleman
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-030

**PACCAR OF CANADA LTD.,
PETERBILT OF CANADA DIVISION**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant imported Peterbilt glider kits for highway trucks from the United States, on which it paid federal sales tax. Glider kits were also manufactured by the appellant in Canada and it charged federal sales tax on the selling price of these goods. At issue is whether the glider kits are exempt from federal sales tax under section 12 of Part XVII of Schedule III to the Excise Tax Act.

HELD: *The appeal is allowed. The Tribunal is of the view that the conditions are met in the present instance for the glider kits to be tax-exempt under section 12 of Part XVII of Schedule III to the Excise Tax Act. These goods can be considered as articles for use exclusively to manufacture or produce trucks designed primarily for the carriage of freight with a gross vehicle mass rating of 7,250 kg or more. The assembly of a glider kit with the drive-train components constitutes the creation of a highway truck.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: March 3, 1993

Date of Decision: July 27, 1993

*Tribunal Members: John C. Coleman, Presiding Member
Sidney A. Fraleigh, Member
Robert C. Coates, Q.C., Member*

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Janet Rumball

*Appearances: Michael Kaylor, for the appellant
Dominique Gagné, for the respondent*

Appeal No. AP-91-030

**PACCAR OF CANADA LTD.,
PETERBILT OF CANADA DIVISION**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
SIDNEY A. FRALEIGH, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from two decisions of the Minister of National Revenue dated February 14, 1991, disallowing the appellant's refund claims with respect to federal sales tax (FST) paid on imported or domestically manufactured glider kits.

The appellant imported Peterbilt glider kits for highway trucks from the United States, on which it paid FST. The appellant also manufactured Kenworth glider kits in Canada, charging FST on the selling price of these goods.

At issue is whether the glider kits are exempt from FST under section 12 of Part XVII of Schedule III to the Act. This section provides an exemption from FST for "Articles and materials for use exclusively in the manufacture or production of the tax exempt goods mentioned in sections 1 to 10 of this Part."

Mr. Bill MacKillican, who works as Field Service Manager for the Canadian region of the appellant, testified on its behalf. According to this witness, a glider kit consists of a pre-wired, pre-plumbed cab, a hood, a battery box, fuel tanks, a front axle and suspension. There is no engine, no transmission, and no rear axle and suspension. As Mr. MacKillican put it, "[t]he essence of the truck is there except for the drive components." The glider kits are sold by the appellant exclusively to dealers.

According to Mr. MacKillican, the main purpose of the glider kit is to give a truck owner, whose vehicle has been severely damaged, an opportunity to use components salvaged from a wreck. The combination of a glider kit and an existing drive train or salvaged components allows a truck owner to save money over the cost of a new vehicle. In addition to getting this economic benefit, the buyer of a glider kit has the opportunity to change the old vehicle's specifications. The components do not necessarily come from the same vehicle. For instance, the buyer of a glider kit could get a rear axle from a wreck found in a dealer's yard. Mr. MacKillican also told the Tribunal that, for the most part, a dealer is involved to some degree in the rebuilding of the vehicle. The work done is essentially an assembly operation. Finally, Mr. MacKillican touched on the issue of the registration of the new vehicle with the governmental authorities.

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

Counsel for the appellant argued first that section 10 of Part XVII of Schedule III to the Act does not cover the glider kits. Under this section, in essence, parts and equipment installed on transportation equipment found under Part XVII are tax-exempt. In counsel's view, this provision is applicable solely to parts and equipment installed on vehicles already in existence. Furthermore, in the event that tax exemptions seem applicable to the same factual situation, the jurisprudence has established that foreclosure to claim the benefit of one of these legislative provisions does not preclude the taxpayer from relying upon the other provision in order to claim the same tax exemption.

Counsel for the appellant further argued that the conditions set out in section 12 of Part XVII of Schedule III to the Act are satisfied in the present case, namely, that the glider kits are articles "for use" in the "manufacture" of the trucks described in section 1 of Part XVII of Schedule III to the Act. With respect to this last requirement, counsel stressed that the combination of a glider kit and other components amounts to creating the equivalent of a new truck. He added that, insofar as the vehicle registration authorities are concerned, this is a new vehicle. Finally, section 12 does not require that the appellant be the actual manufacturer or producer of the goods described in section 1.

Counsel for the respondent argued that the glider kits should be regarded as "parts" rather than as "articles." She also underlined the rule of interpretation to the effect that a specific provision prevails over a more general one; in her view, section 10 is more specific than section 12. Finally, she pointed out that Parliament's intention had been to provide an exemption to the installer of parts and equipment and that to accept the appellant's line of reasoning would give rise to a second reimbursement of the FST; this was not the legislator's intention.

Having reviewed the evidence and carefully considered the arguments, the Tribunal is of the opinion that the appeal must be allowed. The Tribunal agrees with counsel for the appellant that section 10 is not applicable to the case at hand. However, the Tribunal is of the view that the conditions are met in the present instance for the glider kits to be tax-exempt under section 12. Indeed, the glider kits can reasonably be considered as articles for use exclusively to manufacture or produce trucks designed primarily for the carriage of freight with a gross vehicle mass rating of 7,250 kg or more. On the specific issue of manufacture or production, the uncontradicted evidence adduced by the appellant has convincingly shown the Tribunal that the assembly of a glider kit with the drive-train components, either by a dealer or by a truck owner, constitutes the creation of a highway truck which has new qualities and properties.

For all these reasons, the appeal is allowed.

John C. Coleman

John C. Coleman
Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member