



Ottawa, Tuesday, April 14, 1992

**Appeal No. AP-90-257**

IN THE MATTER OF an appeal heard on February 10, 1992, under section 81.19 of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended;

AND IN THE MATTER OF notices of decision from the Minister of National Revenue, dated March 21, 1990, with respect to notices of opposition served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**PURDEL, COOPÉRATIVE AGRO-ALIMENTAIRE**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Michèle Blouin  
Michèle Blouin  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

*UNOFFICIAL SUMMARY*

**Appeal No. AP-90-257**

**PURDEL, COOPÉRATIVE AGRO-ALIMENTAIRE**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*This appeal is filed under section 81.19 of the Excise Tax Act with respect to three decisions issued on March 21, 1990, by the Minister of National Revenue. The issue is whether the milk cases used by the appellant are tax exempt under section 3, Part V, Schedule III to the Excise Tax Act.*

**HELD:** *The appeal is dismissed because the cases at issue, which are used more than once, are not for use exclusively in the production of milk.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: February 10, 1992*  
*Date of Decision: April 14, 1992*

*Tribunal Members: Michèle Blouin, Presiding Member*  
*John C. Coleman, Member*  
*Desmond Hallissey, Member*

*Counsel for the Tribunal: Robert Desjardins*

*Clerk of the Tribunal: Dyna Côté*

*Appearances: Guy Bonin, for the appellant*  
*Christine Hudon, for the respondent*

Appeal No AP-90-257

**PURDEL, COOPÉRATIVE AGRO-ALIMENTAIRE**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member  
JOHN C. COLEMAN, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

This appeal was filed under section 81.19 of the *Excise Tax Act* (the Act).

The appellant, who acts as the agent for I.P.L. Inc., Norseman Plastics Limited and Janber & Associates Ltd., submitted three applications to the respondent for the refund of federal sales tax paid on the purchase of plastic milk cases. The notices of determination rejecting these applications were issued by the respondent on February 7, 16 and 28, 1989. In response to notices of opposition served by the appellant, the respondent issued three notices of decision on March 21, 1990, which confirmed the notices of determination.

The issue at dispute in this appeal is whether these cases are eligible for the sales tax exemption prescribed in section 3, Part V, Schedule III to the Act. Bags or cartons of milk, produced and sold by the appellant, are packed in these cases at the dairy. This part of the Schedule deals with foodstuffs that are exempt from the federal sales tax. Section 3 refers to "Articles and materials for use exclusively in the manufacture or production of the tax exempt goods mentioned in sections 1 and 2 of this Part."

The appellant's representative, Guy Bonin, gave evidence concerning the appellant's production line. After being filled with milk and sealed, the milk containers (e.g., cartons and bags) are automatically placed in the plastic cases by a packing machine. The cases are then routed to a refrigerated warehouse where they are placed in trucks for distribution. Mr. Bonin also informed the Tribunal that the appellant has a system for collecting the cases distributed to customers; when the milk is delivered to customers, the empty cases are collected and returned to the dairy for re-use. The recovery rate of the empty cases appears to be quite high. In response to a question from the Tribunal, Mr. Bonin stated that the useful life of a plastic case was about three or four years. Mr. Bonin also testified that the appellant has two methods of distributing the milk that it produces, specifically, through direct distribution by its employees or through distribution by independent distributors.

Mr. Bonin argued that the tax exemption prescribed in section 3, Part V, Schedule III to the Act applies to the milk cases because these cases are used exclusively in the production of milk. He cited various definitions of the word "production" from a variety of academic works relating to management and claimed that the cases at issue represented, in fact, an input in the production of milk. Mr. Bonin also stated that these cases were accounted for as a manufacturing cost and that production would stop if they were not available.

Counsel for the respondent argued that the milk cases did not qualify under the exemption claimed by the appellant. She presented several arguments, including the non-physical incorporation of the cases to the milk, as well as the failure to satisfy the requirement of exclusivity stated in section 3 with respect to the destination of the milk cases used by the appellant. She also pointed out that the legislator had provided specific exemptions for containers under Schedule III.

After reviewing the evidence and considering all of the arguments, the Tribunal finds that the appeal must be dismissed. The plastic cases do not meet the eligibility criteria for the exemption requested in this instance. Section 3, Part V, Schedule III stipulates that the materials or articles are for use "exclusively" in the production of tax exempt goods. The evidence presented to the Tribunal leaves no doubt that the milk cases are used by the appellant for the storage, transport and distribution of milk. The evidence showed that these plastic cases, although linked to milk production operations, are in fact the physical means selected by the appellant to distribute milk to customers. The milk cases must be for use "exclusively" in the production of the tax exempt goods cited in sections 1 and 2, Part V, Schedule III. Moreover, the milk cases are containers that are used over and over again, which is contrary to the provisions of Schedule III which prescribe specific exemptions for containers.

The appeal is dismissed.

Michèle Blouin  
Michèle Blouin  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

Desmond Hallissey  
Desmond Hallissey  
Member