



Ottawa, Monday, April 6, 1992

Appeal No. AP-91-134

IN THE MATTER OF an appeal heard on February 13, 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 May 31, 1991, relating to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

TILL-FAB LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The Tribunal allows the appeal in part, returns this matter to the respondent and requests that the firm records be reviewed in order to exempt from sales tax: (1) all roll tarp assemblies sold prior to February 19, 1987, which, in light of the Tribunal's reasons, were exempted from sales tax according to the opinion of the Minister of National Revenue and providing that the goods also meet the other conditions of section 10, Part XVII, Schedule III to the *Excise Tax Act*; and (2) in accordance with the said section, all roll tarp assemblies installed on new equipment without regard to the date of installation or the value of the assembly.

Charles A. Gracey

Charles A. Gracey

Presiding Member

W. Roy Hines

W. Roy Hines

Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Member

Robert J. Martin

Robert J. Martin

Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-134

TILL-FAB LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant is the manufacturer of truck roll tarp assemblies. The issue is whether two "roll tarp assemblies" installed on two truck trailers of a train configuration used in highway freight transport, should each be considered one unit for the purposes of the exempting provision in section 10, Part XVII, Schedule III to the Excise Tax Act, which requires that the sale price by the producer must exceed \$2,000 per unit.

HELD: *The appeal is allowed in part. The Tribunal observes that, as it read before February 19, 1987, section 10 expressly provided for the opinion of the Minister of National Revenue in determining whether the fair sale price exceeded \$2,000 per unit. The evidence is that a tax interpretation ruling was issued on August 6, 1986, confirming that the roll tarp assemblies were unconditionally exempt from sales tax provided, inter alia, that they accounted for the \$2,000 value. In view of that evidence, the Tribunal concludes that the sale of two roll-top tarp assemblies for the purpose of a train assembly before February 19, 1987, were not subject to the sales tax where they exceeded \$2,000 as long as the other conditions of the exempting provision were met. But for that period, the plain and ordinary wording of section 10 clearly establishes that the \$2,000 requirement applies for each unit, that is, for each roll tarp assembly. Also, the installation of roll tarp assemblies on new equipment is not subject to the \$2,000 value per unit requirement.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 13, 1992
Date of Decision: April 6, 1992

Tribunal Members: Charles A. Gracey, Presiding Member
W. Roy Hines, Member
Robert C. Coates, Q.C., Member

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Janet Rumball

Appearances: Frank J. Welsh, for the appellant
Brian Tittlemore, for the respondent

Appeal No. AP-91-134

TILL-FAB LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
W. ROY HINES, 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 a decision of the Minister of National Revenue (the Minister) disallowing an objection to an assessment for federal sale tax owing on the sale of roll tarp assemblies for trucks and trailers.

The appellant, Till-Fab Limited, of Tillsonburg, Ontario, is a manufacturer of truck tarp storage and deployment devices. On July 18, 1986, it sought a ruling from Revenue Canada, Excise, on whether the roll tarp assembly would be exempt from federal sales tax. Photographs accompanied the request for ruling and one of these depicted two trailers hooked together. In an interpretation ruling dated August 6, 1986, the appellant was advised that the goods in issue were unconditionally exempt from sales tax. However, on March 2, 1990, the appellant was assessed for an amount of \$15,608.66 including tax, penalty and interest for the sales of these goods. The assessment covers the period from December 1, 1986, to January 31, 1990. The appellant immediately filed a notice of objection that was disallowed by the Minister on May 31, 1991.

The issue in this appeal is whether two different "roll tarp assemblies" installed on two truck trailers of a train configuration used in highway freight transport, should be considered one unit for the purposes of the exempting provision in paragraph 10, Part XVII, Schedule III to the Act, which requires that the sale price by the manufacturer exceed \$2,000 per unit.

The relevant provisions of the Act in this case are found in Schedule III, Part XVII, sections 2 and 10. These sections read as follows:

2. Truck trailers, tractor trailers and semi-trailers, designed for the carriage of freight, with a gross vehicle mass rating, within the meaning given to that expression by regulation of the Governor in Council, of seven thousand two hundred and fifty kilograms (7 250 kg) or more; fifth wheel dollies designed for use in converting tractor trailers or semi-trailers to full trailers for highway towing purposes.

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

...

10. Parts and equipment installed on the tax exempt goods mentioned in sections 1, 2, 4, 5, 6, 7 and 9 of this Part or designed for permanent installation on the tax exempt goods mentioned in section 3 of this Part where the sale price by the Canadian manufacturer or the duty paid value of the imported article exceeds two thousand dollars per unit; all parts and equipment installed on the tax exempt goods mentioned in sections 1, 2, 3, 4, 5, 6, 7 and 9 of this Part prior to the first use of those tax exempt goods; except that parts and equipment installed on the tax exempt goods mentioned in section 1 of this Part are exempted from tax only if they are designed to facilitate the carriage or handling of freight.

It is noted that, at the time of the request for an interpretation ruling, section 10 was written differently. Until an amendment in 1988, which is deemed to have come into force on February 19, 1987, the earlier version read:

8. Parts and equipment, designed for permanent installation on the tax-exempt goods mentioned in sections 1, 2, 3, 4, 5, 5.1, 5.2 and 7 of this Part where, in the opinion of the Minister, the fair sale price by the Canadian manufacturer or the fair duty-paid value of the imported article, exceeds two thousand dollars per unit; all parts and equipment installed on the tax-exempt goods mentioned in sections 1, 2, 3, 4, 5, 5.1, 5.2 and 7 of this Part prior to the first use of those tax-exempt goods; except that parts and equipment designed for permanent installation or installed on the tax-exempt goods mentioned in section 1 of this Part are exempted from tax only if they are designed to facilitate the carriage or handling of freight. (emphasis added)

At the hearing, the appellant was represented by its agent, the firm's accountant, Mr. Frank J. Welsh. He presented some evidence and general information to the Tribunal concerning the nature of the roll tarp assembly units, the general history and nature of the firm's activities, and the sequence of events leading up to this appeal. Mr. Welsh also referred to three letters from established trucking firms stating that combinations of two trailers in train configuration were considered to be single units. He further argued that when his client sought the ruling, one of the pictures submitted clearly showed a train assembly consisting of two trailers.

In presenting its case, the respondent called a witness, Mr. Gary K. Corcoran, an Area Enforcement Supervisor, Drivers and Vehicles, for the Ontario Ministry of Transportation. Mr. Corcoran testified that, under the *Highway Traffic Act*,² a truck train assembly consisting of a tractor and two coupled trailers were considered three separate units. He explained that each unit was licensed regardless of the distinction between "A," "B" and "C" train assembly configurations.

In argument, Mr. Welsh submitted that the appellant was advised by Revenue Canada that the goods in issue were exempted from sales tax. He also submitted that a train assembly is regarded as one single unit in the trade. Finally, he contended that Revenue Canada's decision is based on its own judgment rather than on the law and that the appellant acted in good faith in obtaining an opinion from Revenue Canada.

2. R.S.O. 1980, c. 198, as amended.

Counsel for the respondent argued that the appellant has the onus of proving that the assessment is wrong. He further submitted that the train assembly in issue should not be considered one unit because: the truck trailers are temporarily joined together and drawn by a transport truck; the *Highway Traffic Act* treats each trailer as a single unit; and, where more than one unit can be considered as a single unit, the *Highway Traffic Act* expressly states that fact.

Alternatively, counsel for the respondent argued that, regardless of the vehicle involved, the \$2,000 criterion applies to one unit and that the cost of each roll tarp unit in a train assembly must exceed \$2,000.

In the course of the hearing, it was pointed out that an earlier version of section 10 was in force when a Revenue Canada officer made the interpretation ruling on which is based the appellant's claim. The Tribunal observes that, as it read before February 19, 1987, the section expressly provided for the opinion of the Minister in determining whether the fair sale price exceeded \$2,000 per unit. Counsel for the respondent admitted that an interpretation ruling such as the one dated August 6, 1986, which was issued on the request of the appellant, is considered a decision of the Minister for the purpose of that section. The Tribunal, therefore, concludes that the said ruling represents the opinion of the Minister and is binding. Since there is no evidence that the appellant submitted any price information in seeking the said ruling, but that it received an unconditional exemption, the Tribunal concludes that the sale of two roll tarp assemblies for a train assembly before February 19, 1987, were not subject to sales tax as long as the other conditions of the exempting provision were met. As for the period after February 19, 1987, the tax interpretation had no longer the authority of a Minister's opinion under new section 10, and the Tribunal must apply the plain and ordinary meaning of the words used in that section. That provision makes it clear that the \$2,000 requirement applies to each unit, that is, to each roll tarp assembly, regardless that it is sold for a single trailer or for a train assembly. This conclusion also flows from the requirement, in the case of importation, that the duty paid value of the imported article must exceed \$2,000. As frustrating as this situation might be for the appellant, the law is clear and has to be applied accordingly.

Finally, another matter of interpretation arose during the hearing and relates to the meaning of the next clause in section 10 concerning the installation of roll tarp assemblies on new equipment. Under questioning from the Tribunal, the appellant's agent further described his client's business and stated that part of its business involved the sale and installation of roll tarp assemblies on new equipment. In view of this, the Tribunal then directed parties to a consideration of the following clause in section 10:

... all parts and equipment installed on the tax exempt goods mentioned in sections 1, 2, 3, 4, 5, 6, 7 and 9 of this Part prior to the first use of those tax exempt goods ...

The respondent indicated that it concurred with the interpretation the Tribunal placed on the clause that installation of roll-top tarp assemblies on new equipment is not subject to the \$2,000 value per unit requirement. Thus, it is hereby found that tax exemption shall also apply to all units installed on new trailers in accordance with section 10.

The Tribunal, therefore, allows the appeal in part, returns this matter to the respondent and requests that the firm records be reviewed in order to exempt from sales tax: (1) all roll tarp assemblies sold prior to February 19, 1987, which, in light of the tribunal's reasons, were exempted from sales tax according to the Minister's opinion and providing that the goods also meet the other conditions of section 10, Part XVII, Schedule III to the Act; and (2) in accordance with the said section, all roll tarp assemblies installed on new equipment without regard to the date of installation or the value of the assembly.

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