CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, September 3, 1992

Appeal No. AP-91-147

IN THE MATTER OF an appeal heard on May 20, 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 June 28, 1991, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

TETRA PAK INC. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed. The goods in issue are exempt from federal sales tax under section 3, Part V, Schedule III to the *Excise Tax Act* as articles or materials for use in the manufacture or production of tax-exempt goods, namely, food and drink for human consumption.

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

W. Roy Hines
W. Roy Hines
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-91-147

TETRA PAK INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The issue in this appeal is whether the drinking straws manufactured by the appellant are exempt from federal sales tax under section 3, Part V, Schedule III to the Excise Tax Act.

***HELD**: The appeal is allowed.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*May 20, 1992*
Date of Decision:	*September 3, 1992*
Tribunal Members:	*Robert C. Coates, Q.C., Presiding Member* *W. Roy Hines, Member* *Desmond Hallissey, Member*
Counsel for the Tribunal:	*Brenda C. Swick-Martin*
Clerk of the Tribunal:	*Dyna Côté*
Appearances:	*T.A. Sweeney, for the appellant* *Linda Wall, for the respondent*

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TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-147

TETRA PAK INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., 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).

The appellant specializes in the packaging of liquid foods. It manufactures drinking straws and drinking boxes for liquid foods and imports the machines to fill and seal the drinking boxes. It sells or leases its machinery to customers that produce drinking boxes to contain products of their own. It also sells pointed straws that are attached to the drinking boxes during the production process.

The appellant applied for a refund of federal sales tax paid on drinking straws sold to its customers for use in producing drinking boxes to contain liquid foods. The appellant's refund claim was rejected, whereafter the respondent received a notice of objection dated November 22, 1990. On June 28, 1991, a notice of decision was issued by the respondent confirming the determination.

The issue in this case is whether the drinking straws are exempt from federal sales tax under section 3, Part V, Schedule III to the Act as articles or materials for use in the manufacture or production of tax-exempt goods, namely, food and drink for human consumption. The relevant provisions of the Act read as follows:

PART V

FOODSTUFFS

1. Food and drink for human consumption (including sweetening agents, seasonings and other ingredients to be mixed with or used in the preparation of the food and drink), other than

...

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

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3. 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.

Mr. Peter Gahagan, Controller of Tetra Pak Inc. (Tetra Pak), appeared as a witness for the appellant. He testified that all the products manufactured by the appellant were exempt from federal sales tax, with the exception of the drinking straws, because they were sold to manufacturers of liquid foods. He described the appellant's continuous packaging line that is sold or leased to customers. A roll of packaging material is fed through the filling machine and, when it comes out, it is sealed. The cartons continue on a conveyor belt to the straw applicator machine where hot glue is applied to the corners of each package and the drinking straw is attached. The straw itself comes in a reel of shrink wrapped straws which, when fed through the straw applicator, are cut into individually wrapped straws which, in turn, are glued onto the side of the cartons. They continue on the conveyor to the shrink-film wrapper where they are grouped into sets of three and shrink wrapped with the straws inside. The sets of three cartons then move to the tray-packing machine where they are grouped again into nine sets on a cardboard tray. The cardboard tray then proceeds to the next machine where it is shrink wrapped and then moved to a pallet loader which puts the tray on a pallet and shrink wraps it again for delivery to the customers.

Ms. Lise-Ann Riddell, Marketing Manager of SunPac Foods Limited (SunPac), a major customer of the appellant, appeared as Tetra Pak's second witness. SunPac produces fruit juices and drinks in a whole range of containers. Ms. Riddell testified that the major product sold is the 250 ml Tetra Brik package. This is because of its convenient and easy-to-use nature attributable to the existence of the straw attached to the package.

Mr. Allan McPherson, an independent consultant with Tax Save Consultants Limited, was the appellant's final witness. Mr. McPherson reviewed several administrative rulings issued by the Department of National Revenue exempting goods from federal sales tax that were, in his view, comparable to those in issue in this case.

No witnesses for the respondent appeared during the hearing.

Counsel for the appellant argued that common sense combined with the rules of statutory interpretation lead to the conclusion that the drinking straws should be exempt from federal sales tax under section 3, Part V, Schedule III to the Act as articles for use exclusively in the production of tax-exempt goods. Counsel submitted that section 3 does not require that the drinking straws be incorporated into the juice itself in order to be exempt. Counsel cited the Tariff Board decision in *Singer Sewing Machine Co. of Canada Ltd. v. The Minister of National Revenue for Customs and Excise*[2] to support the proposition that Parliament must have intended to grant an exemption for materials and articles other than ingredients used in the juices by choosing the language which appears in section 3. Also cited was dissenting member Bertrand's conclusion in *Universal Grinding Wheel v. The Deputy Minister of National Revenue for Customs and Excise*[3] that "materials and articles for use in the manufacture of" meant that the articles and materials have to be incorporated into, or become a physical part of, the finished product. Counsel submitted that, although the facts in the present case are very different from those in the *Universal Grinding Wheel* case, the drinking straws do become a physical part of the finished product and, thus, do not fall outside of the rule set out in that case. In the alternative, counsel

2. (1989), 17 C.E.R. 97.
3. (1985), 6 C.E.R. 236; (1984), 9 T.B.R. 194, at 198.

argued that the drinking straws should be exempt from federal sales tax under section 3, Part I, Schedule III to the Act as materials for use exclusively in the manufacture of tax-exempt goods mentioned in section 1 of that Part, namely, the Tetra Pak drinking boxes.

Counsel for the respondent argued that the drinking straws do not qualify for exemption from federal sales tax under section 3, Part V, Schedule III to the Act. Jurisprudence was submitted to support the argument that the drinking straws are not articles used in the manufacture of juice and are not a constituent element of the juice and, therefore, do not qualify for exemption from federal sales tax. The respondent relied on the decision in *Dentsply Canada Limited v. The Minister of National Revenue*[4] to argue that the drinking straws are not incorporated in the manufacture of juice, nor do they become a physical part of the juice and, therefore, do not qualify for exemption from federal sales tax under section 3, Part V, Schedule III to the Act. Rather, they are used to provide access and to facilitate the consumption of juice. Counsel also argued that federal sales tax is imposed when the appellant sells the drinking straws to its customers. At that time, they are sold as separate items not affixed to any drinking boxes, and the production process shown by the appellant is subsequent to the incidence of tax.

The Tribunal finds that the drinking straws are exempt from federal sales tax as articles for use exclusively in the production of tax-exempt goods within the meaning of section 3, Part V, Schedule III to the Act. The Tribunal accepts the argument of the appellant's counsel and the jurisprudence put forward that the word "article" must be given a broad enough meaning to include the drinking straws.[5] With respect to the requirement that the drinking straws be used exclusively in the production of tax-exempt goods, there is no evidence that the pointed straws in issue are used for any purpose other than in the production of tax-exempt liquid foods. The Tribunal has reviewed the jurisprudence and is convinced that the word "production" in section 3, Part V, Schedule III to the Act must be accorded a broad meaning. In *Gaston Charbonneau v. The Queen*,[6] a federal sales tax case, the issue was whether sand, gravel and salt, mixed together and packaged, constituted manufactured or produced goods. The Federal Court of Canada held that there was no doubt that the goods in question were "produced." Dubé J., at p. 5, stated:

> *Even if the gravel and salt keep their respective attributes, the combination of the two results in a commercial product distributed in a distinctive package and having a market value.*

In this case, the drinking straws are used in the production of a commercial product, the tax-exempt juice, which is distributed in a distinctive package and has a market value. In the Tribunal's view, the drinking straws are clearly used in the production of tax-exempt juice, which includes that part of production that encompasses the packaging of the juice.

Finally, the Tribunal finds that the use of the drinking straws in the production of tax-exempt juice does not require that they be incorporated into, or become a constituent part of, the tax-exempt goods. In the Tribunal's view, if both sections 1 and 3, Part V, Schedule III

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4. Canadian International Trade Tribunal, Appeal No. 3095, March 30, 1990.

5. See *Singer Sewing Machine Co. of Canada Ltd. v. The Minister of National Revenue for Customs and Excise*, (1989), 17 C.E.R. 97; *Les Entreprises Kato Inc. v. The Deputy Minister of National Revenue, Customs and Excise*, [1984] 1 F.C. 827.

6. Federal Court of Canada, Court No. T-2512-75, March 28, 1978, at p. 5.

to the Act required physical incorporation into the juice, then a redundancy would be created which Parliament could not have intended. The decision in the *Dentsply*[7] case, where the Tribunal found that the articles and materials for use in the manufacture of tax-exempt goods must be incorporated into, or form a constituent part of, the finished product to qualify for the exemption, can be distinguished from this case on the grounds that it concerned a statutory provision which had been amended to expressly provide that the articles and materials be incorporated into the tax-exempt goods to qualify for the exemption. No such incorporation requirement is expressly provided for in section 3, Part V, Schedule III to the Act.

Having found the drinking straws to be exempt from federal sales tax under section 3, Part V, Schedule III to the Act, it is not necessary to decide whether they would qualify for exemption from federal sales tax under section 3, Part I, Schedule III to the Act, as cited by the appellant in the alternative.

The appeal is allowed.

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

W. Roy Hines
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Desmond Hallissey
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Member

7. *Supra*, note 4.