

Ottawa, Monday, April 5, 1993

Appeal No. AP-91-267

IN THE MATTER OF an appeal heard on October 23, 1992,
under section 18 of the *Softwood Lumber Products Export
Charge Act*, R.S.C. 1985, c. 12 (3rd Supp.) and 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 January 17, 1992, with respect to
a notice of objection served under section 81.15 of the
Excise Tax Act.

BETWEEN

JOHN CLARK BUILDING ENTERPRISES LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan

Member

Michèle Blouin

Michèle Blouin

Member

Michel P. Granger

Michel P. Granger

Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-267

JOHN CLARK BUILDING ENTERPRISES LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the appellant was properly assessed for outstanding export charges, interest and penalty imposed pursuant to the Softwood Lumber Products Export Charge Act on softwood lumber products exported to the United States.

HELD: *The appeal is dismissed.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: October 23, 1992
Date of Decision: April 5, 1993

Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Kathleen E. Macmillan, Member
Michèle Blouin, Member

Counsel for the Tribunal: Clifford Sosnow

Clerk of the Tribunal: Janet Rumball

Appearance: Howard Baker, for the respondent

Appeal No. AP-91-267

JOHN CLARK BUILDING ENTERPRISES LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
KATHLEEN E. MACMILLAN, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This appeal concerns an assessment of taxes, interest and penalty made pursuant to the *Softwood Lumber Products Export Charge Act*¹ (the Act) respecting the appellant's exports of lumber to the United States for the period from September 15, 1988, to April 30, 1990 (the assessment period). The assessed sum is \$69,804.82. Most of the taxes have been paid by the appellant. However, there is still an outstanding balance of some \$17,000, which is essentially interest and penalty because of the appellant's late payment of taxes imposed pursuant to the Act.

There is no argument as to the facts of this case or quantum pertaining to the assessment of tax liability, interest and penalty. The appellant is a wholesaler of lumber products, principally for export. In August 1988, the appellant purchased a licensed lumber wholesaler called Wigley & Brazeau Lumber Limited (Wigley & Brazeau). Because the licence held by Wigley & Brazeau could not be used by the appellant, the latter had to apply for a licence in order to purchase lumber products on a tax-exempt basis. Thus, prior to the appellant receiving the licence, all purchases were made on a tax-included basis. On April 26, 1989, the appellant received its wholesaler's licence which was made effective March 14, 1989.

On December 21, 1988, the appellant received its Softwood Lumber Products Export Charge Licence (export licence) which was made effective September 15, 1988. Pursuant to the Act, this licence, which the appellant was required to obtain, identifies the appellant as the exporter against whom export charges are imposed regarding exports of softwood lumber to the United States.

During the assessment period, the appellant purchased softwood lumber products from its suppliers and exported those products to the United States. When the appellant received its export licence, it was advised by the respondent's officials of its obligation to remit the export charge on its exports of softwood lumber. On October 10, 1990, an audit conducted by the respondent's officials for the assessment period revealed that the appellant had failed to impose and collect these export charges (\$34,774.81) and had improperly claimed certain export deductions (\$19,859.23). In the result, the appellant was required to pay \$54,634.04 in export charges, as well as \$10,760.84 in interest and \$4,409.93 in penalty.

Shortly before this assessment, on September 19, 1990, the appellant applied for a refund of federal sales tax paid on previous purchases from its suppliers of softwood lumber. On October 29, 1990, the appellant received \$33,124.91. Two days later, on October 31, 1990, the

1. R.S.C. 1985, c. 12 (3rd Supp.).

appellant remitted \$34,774.81 representing the previously unpaid export charges imposed under the Act.

Then, in January 1992, the respondent, based upon representations and evidence provided by the appellant, modified the assessment that the appellant had improperly claimed export deductions of \$19,859.23, by allowing the appellant to claim \$17,596.68, thereby leaving \$2,262.55 in unpaid taxes. Because of this modification, interest and penalty were correspondingly reduced to \$8,113.19 (from \$10,760.84) and \$3,333.81 (from \$4,409.93). However, additional interest and penalty have continued to be imposed (\$2,421.85 and \$1,202.09, respectively) resulting in a tax, interest and penalty bill of \$17,333.51.

The appellant did not dispute the imposition of tax liability, including interest and penalty imposed pursuant to the Act. Rather, the appellant was requesting equitable relief from the Tribunal and, in particular, relief in respect of the interest and penalty charge of \$15,070.94 which, it can simply be stated, the appellant claimed was unfair. In this regard, counsel for the appellant, who was engaged after the appellant filed its appeal, has advised his client that the Tribunal does not possess equitable jurisdiction.

The Tribunal agrees with counsel's assessment. The Tribunal does not have jurisdiction in equity. Nor does the Tribunal see any statutory basis upon which it can allow this appeal or waive the interest and penalty fee. This is not to say that the Tribunal is not sympathetic to the appellant's situation. It is. There is nothing on the record to suggest that the appellant sought to avoid its tax liability. Further, while the interest and penalty assessment resulted from the tardiness with which the appellant satisfied its tax obligation under the Act, the speed with which it applied its federal sales tax refund against its export charges indicates indirectly that the concurrent imposition of tax under both this Act and the *Excise Tax Act*² placed quite a financial burden on the appellant.

Nevertheless, the Tribunal is bound by the law. Accordingly, the Tribunal dismisses the appeal.

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

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Michèle Blouin
Michèle Blouin
Member

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