



Ottawa, Wednesday, April 7, 1993

Appeal No. AP-92-051

IN THE MATTER OF an appeal heard on December 7, 1992, under 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 March 31, 1992, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

DAVRON FOREST PRODUCTS LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Desmond Hallissey

Desmond Hallissey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-051

DAVRON FOREST PRODUCTS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant is a licensed manufacturer and wholesaler of lumber, and products made from lumber, located in British Columbia. As part of its business, the appellant purchases lumber which it supplies to a dressing mill. The mill manufactures fencing products (i.e. fencing boards, posts and rails) which are then sold by the appellant. The amount in dispute relates to sales tax paid on the sale price of these finished goods. The issue in this appeal is whether the appellant is a manufacturer of fencing products within the meaning of paragraph (b) of the definition of "manufacturer or producer" found under subsection 2(1) of the Excise Tax Act and therefore required to account for sales tax on the sale price of the goods in issue under subsection 50(1) of the Excise Tax Act.

HELD: *The appeal is dismissed. The appellant was unable to establish that it did not retain proprietary or other rights in the subject goods being manufactured for it and, accordingly, with respect to the goods in issue, it is deemed to be a manufacturer within the meaning of paragraph (b) of the definition of "manufacturer or producer" found under subsection 2(1) of the Excise Tax Act.*

Place of Hearing: Vancouver, British Columbia

Date of Hearing: December 7, 1992

Date of Decision: April 7, 1993

*Tribunal Members: Arthur B. Trudeau, Presiding Member
Robert C. Coates, Q.C., Member
Desmond Hallissey, Member*

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Nicole Pelletier

*Appearances: Kenneth Sam, for the appellant
Linda J. Wall, for the respondent*

Appeal No. AP-92-051

DAVRON FOREST PRODUCTS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
ROBERT C. COATES, Q.C., Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from a determination of the Minister of National Revenue (the Minister).

The appellant carries on business in British Columbia and is a licensed manufacturer and wholesaler of lumber and products made from lumber. As part of its business, the appellant purchases lumber that it supplies to a dressing mill which manufactures fencing products (i.e. fencing boards, posts and rails) for the appellant. The appellant then sells the finished products. The amount in dispute relates to sales tax paid on the sale price of these finished goods.

On November 9, 1990, the appellant applied for a refund of federal sales tax (FST) paid for the period from October 1, 1988, to October 31, 1990, in relation to the difference between the selling price of jobbed and remanufactured lumber, and the purchase price or duty-paid value of the lumber. By notice of determination dated January 18, 1991, the respondent allowed the application for refund in part. By notice of objection dated March 15, 1991, the appellant, citing Memorandum ET 202-21,² objected to the determination on the basis that: (i) lumber sent out by a licensed wholesaler for remanufacturing should be taxed on its cost; and (ii) the respondent incorrectly calculated the reconstructed trading account. By notice of decision dated March 31, 1992, the respondent confirmed the determination with respect to the first basis of objection by the appellant, but accepted the second representation. Therefore, it is with respect to the appellant's first representation in its notice of objection that this appeal relates.

The issue in this appeal is whether the appellant is a manufacturer of fencing products within the meaning of paragraph (b) of the definition of "manufacturer or producer" found under subsection 2(1) of the Act and therefore required to account for sales tax on the sale price of the goods in issue under subsection 50(1) of the Act. In considering this issue, the Tribunal notes that it is necessary to determine whether the fencing products are goods that are "manufactured" within the meaning of the Act.

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

2. Lumber - Tax Computation, Department of National Revenue, Customs and Excise, January 20, 1978.

The relevant provisions of the Act are as follows:

50. (1) There shall be imposed, levied and collected a consumption or sales tax at the rate prescribed in subsection (1.1) on the sale price or on the volume sold of all goods

(a) produced or manufactured in Canada

(i) payable ... by the producer or manufacturer at the time when the goods are delivered to the purchaser or at the time when the property in the goods passes, whichever is the earlier.

2. (1) In this Act,

... "manufacturer or producer" includes

... (b) any person, firm or corporation that owns, holds, claims or uses any patent, proprietary, sales or other right to goods being manufactured, whether by them, in their name or for or on their behalf by others, whether that person, firm or corporation sells, distributes, consigns or otherwise disposes of the goods or not.

The appellant's representative, Mr. Kenneth Sam, is a tax consultant who is neither a principal nor an employee of the appellant. Mr. Sam appeared without any witness from Davron Forest Products Ltd. He stated that he wished only to make argument respecting the application of Memorandum ET 201-21 to the facts of the case. After discussion between the Tribunal and both parties regarding the evidentiary basis of the case, the representative of the appellant stated that he was prepared to accept the facts as set out in the respondent's brief. Those facts provide that, with respect to its fencing operations, the appellant is a manufacturer and the fencing products in issue are manufactured goods.

The Tribunal is of the view that the issue in this appeal is essentially a question of fact. In order to succeed in its appeal, the appellant must clearly establish under paragraph (b) of the definition of "manufacturer or producer" found under subsection 2(1) of the Act that it does not hold, claim, own or use any patent, proprietary, sales or other rights to the goods being manufactured for or on its behalf. In light of the fact that no evidence was lead by the appellant in this regard, the Tribunal concludes that the appellant has not brought itself outside paragraph (b) of the definition of "manufacturer or producer" found under subsection 2(1) of the Act and thus is deemed to be a manufacturer for purposes of this appeal. Therefore, the appellant has not shown that the respondent's determination is incorrect.

Accordingly, the appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Desmond Hallissey

Desmond Hallissey
Member