

Ottawa, Friday, March 19, 1993

**Appeal No. AP-92-071**

IN THE MATTER OF an appeal heard on October 22, 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 April 16, 1992, with respect to a  
notice of objection served under section 81.17 of the  
*Excise Tax Act*.

**BETWEEN**

**JIMBOB RENTALS 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

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-071**

**JIMBOB RENTALS LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue in this appeal is whether the portable steel bridges qualify for sales tax exemption under paragraph 1(j) of Part XIII of Schedule III to the Excise Tax Act, which reads: "machinery and apparatus, including wire rope, drilling bits and seismic shot-hole casing, for use in exploration for or discovery or development of petroleum, natural gas or minerals."*

**HELD:** *The appeal is dismissed. The Tribunal does not believe that the portable bridges qualify as "apparatus" as that term is used within paragraph 1(j) of Part XIII of Schedule III to the Excise Tax Act Nor does it consider the bridges for use in the exploration, discovery or development of petroleum, natural gas or minerals.*

*Place of Hearing: Edmonton, Alberta*  
*Date of Hearing: October 22, 1992*  
*Date of Decision: March 19, 1993*

*Tribunal Members: Arthur B. Trudeau, Presiding Member*  
*Sidney A. Fraleigh, Member*  
*Desmond Hallissey, Member*

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Dyna Côté*

*Appearances: Douglas R. Densmore, for the appellant*  
*Linda J. Wall, for the respondent*

Appeal No. AP-92-071

**JIMBOB RENTALS LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member  
SIDNEY A. FRALEIGH, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of a determination of the Minister of National Revenue disallowing the appellant's refund application in the amount of \$22,666. The appellant's refund application was for taxes paid on portable bridges installed during the construction of access roads to oil well sites. The issue in this appeal is whether the portable steel bridges qualify for sales tax exemption under paragraph 1(j) of Part XIII of Schedule III to the Act.

For purposes of this appeal, the relevant provisions of the Act read as follows:

*51. (1) The tax imposed by section 50 does not apply to the sale or importation of the goods mentioned in Schedule III.*

*SCHEDULE III*

*PART XIII*

*PRODUCTION EQUIPMENT, PROCESSING  
MATERIALS AND PLANS*

*1. All the following:*

...  
*(j) machinery and apparatus, including wire rope, drilling bits and seismic shot-hole casing, for use in exploration for or discovery or development of petroleum, natural gas or minerals.*

Mr. Robert G. Reay, who is the owner of JIMBOB Rentals Ltd., served as a witness for the appellant. He testified that the bridges in issue come in various lengths and widths, ranging from 30 feet to 110 feet in length and are available in two standard widths, being 14 feet and 16 feet. A normal bridge is designed to carry 50 tons, but can carry up to 165 tons. A bridge is typically used to span a river as part of an access road off a public or private road to the location of oil well drilling. He indicated that government regulations require the use of a bridge to span any creek or river.

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

Mr. Reay explained that, when an oil company identifies a potential drill site, it hires a contractor to build an access road to the location. The road allows the transportation of the drilling rig and equipment to the site. An oil company such as Shell Oil or Dome Petroleum will rent a bridge to gain access to the drill site. The appellant company is responsible for installing the bridge. Mr. Reay indicated that, if the well begins to produce, "the bridge stays in place." He asserted that, without the bridge, drilling could not proceed.

A second witness for the appellant, Mr. William R. Hibbard, is a civil engineer whose company was retained by the appellant to provide engineering designs for some of the bridges that it leased or sold. He described the various components of a bridge, the dissipation of a weight load through its components and the design features that make it suitable for its intended purpose.

In argument, the appellant's representative asserted that the term "apparatus" had been considered a word of broad application in previous decisions of the Tariff Board<sup>2</sup> and that the bridges in issue are complex enough to be considered apparatus for purposes of paragraph 1(j) of Part XIII of Schedule III to the Act.

The representative of the appellant argued that the activities of constructing access roads to oil and gas well sites can be considered part of the development or exploration of petroleum and natural gas. A Tariff Board decision<sup>3</sup> was relied on for a definition of the term "development," wherein it is stated:

*Development is the preparation of the field for the taking of oil and gas, including the drilling and completion of wells, transportation of goods of the wells, installation of equipment for lifting the oil in cases of low pressure reservoirs, and the installation of battery facilities, storage facilities, and oil gathering systems.*

In summation, the appellant's representative reiterated that portable steel bridges are used to enable access to oil well lease sites and should be considered apparatus for use in the development of petroleum and natural gas. He noted that the expression "for use in," as used in paragraph 1(j) of Part XIII of Schedule III to the Act is without qualification, contrary to other paragraphs within section 1, thus implying that it should be given a broad interpretation. He also referred to paragraphs 66.1(6)(a) and (b) of the *Income Tax Act*<sup>4</sup> where "Canadian exploration expenses" and "Canadian development expenses" are defined to include any expense incurred in building an access road such as those described in this appeal.

The appellant also raised a second issue with regard to a change in policy by the respondent as a result of an earlier decision of this Tribunal. The Tribunal believes, however, that such an issue is outside the scope of its jurisdiction on an appeal of this nature.

Counsel for the respondent argued that the appellant had not satisfied every requirement necessary to claim the exemption. Portable bridges are not "apparatus," but structures that span and provide passage over water used in the construction of access roads to oil well lease sites.

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2. See, e.g. *Access Corrosion Services Ltd. v. The Deputy Minister of National Revenue for Customs and Excise* (1984), 6 C.E.R. 228, 9 T.B.R. 184; *GTE Sylvania Canada Limited v. The Deputy Minister of National Revenue for Customs and Excise* (1986), 13 C.E.R. 48, 11 T.B.R. 535.

3. *Conrad-Burt Industries Ltd., Integrated Flight Services Ltd. v. The Deputy Minister of National Revenue for Customs and Excise* (1982), 5 C.E.R. 55, 8 T.B.R. 424.

4. R.S.C. 1952, c. 148, as amended by S.C. 1974-75-76, c. 26, s. 36.

In support of the position that the bridges are not apparatus, counsel for the respondent submitted that the word "apparatus" ought to be construed in accordance with its ordinary meaning. After making reference to dictionary definitions and to the meaning applied by this Tribunal in *Pillar Construction Ltd. v. The Minister of National Revenue*,<sup>5</sup> she argued that the bridge is not complex enough to be considered an apparatus since it does not consist of interrelated parts, each having a different function.

Counsel for the respondent further argued that though the bridge is essential to the transport of personnel and equipment, it is not for use in the exploration, discovery or development of petroleum or natural gas.

The Tribunal acknowledges that the term "apparatus" has been given a broad meaning within the cases referred to the Tribunal. However, after considering these cases and the dictionary definitions of the term referred to therein, the Tribunal concludes that the portable bridges are more properly described as structures and that they do not qualify as apparatus as that term is used in paragraph 1(j) of Part XIII of Schedule III to the Act.

Nor does the Tribunal consider the bridges to be for use in the exploration for, or development of, petroleum, natural gas or minerals. The appellant chose not to provide the Tribunal with evidence on the meaning of those terms within the oil industry, save for the definitions provided in earlier decisions of the Tariff Board.<sup>6</sup> As stated by the Tribunal in the *Pillar* decision, "the Tariff Board stated quite clearly that, within the industry, the term 'development' is commonly understood to refer to the drilling of wells in a field or proven area of production."<sup>7</sup> From those Tariff Board decisions, the Tribunal concludes that exploration is commonly understood to refer to the search for oil and gas. The Tribunal does not believe that the bridges in issue are used in the search for oil and gas or for the drilling of wells in a field or proven area of production of oil or gas.

For these reasons, the appeal is dismissed.

Arthur B. Trudeau  
Arthur B. Trudeau  
Presiding Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

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5. Appeal No. AP-89-140, October 25, 1990.

6. *Supra*, note 3; *Pembina Resources Ltd. v. M.N.R.* (1988), 18 C.E.R. 125; *Leonard Pipeline Contractors Ltd. v. The Deputy Minister of National Revenue for Customs and Excise* (1979), 1 C.E.R. 234, 6 T.B.R. 907.

7. *Supra*, note 5 at 7.