



Ottawa, Thursday, June 16, 1994

**Appeal No. AP-92-159**

IN THE MATTER OF an appeal heard on November 30, 1993, 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 July 31, 1992, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**B.C. CHEMICALS LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed in part.

Lise Bergeron

Lise Bergeron  
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Charles A. Gracey

Charles A. Gracey  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-159**

**B.C. CHEMICALS LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant, a manufacturer and producer of chemicals, erected on its premises two structural steel buildings called the tall oil depitching plant and the Chlorate IV plant. The issue in this appeal is, on the one hand, whether the structural steel used to support production machinery and apparatus, venting and cooling equipment, platforms, walkways, accessways, handrails and ramps and, on the other hand, whether those steel platforms, walkways, accessways, handrails and ramps, are exempt from federal sales tax under section 51 of the Excise Tax Act and paragraph 1(a) or 1(l) of Part XIII of Schedule III to the Excise Tax Act as machinery and apparatus used primarily and directly in the manufacture or production of goods or as parts thereof.*

**HELD:** *The appeal is allowed in part. In the Tribunal's view, the evidence provided by the appellant supports its position that, but for the steel used in the rectifier building roof and switchgear roof of the Chlorate IV plant, the goods in issue are parts of machinery and apparatus within the meaning of paragraph 1(l) of Part XIII of Schedule III to the Excise Tax Act. In deciding that those goods are parts of machinery and apparatus, the Tribunal gives weight to the Department of National Revenue's administrative policy set forth in paragraphs 26 and 27 of Excise Memorandum ET 303. The goods in issue meet the conditions of paragraphs 26 and 27 for access structures and supports to be considered parts of machinery and apparatus.*

*Place of Hearing: Vancouver, British Columbia*

*Date of Hearing: November 30, 1993*

*Date of Decision: June 16, 1994*

*Tribunal Members: Lise Bergeron, Presiding Member*

*Arthur B. Trudeau, Member*

*Charles A. Gracey, Member*

*Counsel for the Tribunal: Gilles B. Legault*

*Clerk of the Tribunal: Nicole Pelletier*

*Appearances: Stephen P. Grey, for the appellant*

*Gilles Villeneuve, for the respondent*

**Appeal No. AP-92-159**

**B.C. CHEMICALS LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: LISE BERGERON, Presiding Member  
ARTHUR B. TRUDEAU, Member  
CHARLES A. GRACEY, 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 that partly rejected an application for refund of federal sales tax (FST). The appellant is a manufacturer and producer of chemicals. In the late 1980s, two structural steel buildings, referred to as the tall oil depitching plant and the Chlorate IV plant, were erected on the appellant's premises.

The issue in this appeal is, on the one hand, whether the structural steel used to support production machinery and apparatus, venting and cooling equipment, platforms, walkways, accessways, handrails and ramps and, on the other hand, whether those steel platforms, walkways, accessways, handrails and ramps, are exempt from FST under section 51 of the Act and paragraph 1(a) or 1(l) of Part XIII of Schedule III to the Act as machinery and apparatus used primarily and directly in the manufacture or production of goods or as parts thereof.

At the hearing, the Tribunal heard the testimony of Mr. Michael D. Tkachuk, a civil engineer with expertise in structure. Mr. Tkachuk was called by counsel for the appellant as an expert witness to express his opinion as to the amount of steel used to support the production machinery and apparatus, cooling and venting equipment, as well as platforms, walkways, accessways, handrails and ramps. In fact, Mr. Tkachuk's engineering firm, Allnorth Engineering Ltd., was involved in the design of the tall oil depitching and Chlorate IV plants. Part of the mandate was to design supports for proprietary machinery and apparatus with specifications as to the position, weight and type of supports required. Mr. Tkachuk mentioned that rolled structural steel sections were the most apparent and economical method of construction for supporting the equipment. Mr. Tkachuk expressed the opinion that the structural steel frame used in the tall oil depitching plant was designed specifically to support the elevated machinery and apparatus, platforms, walkways, handrails and venting and cooling equipment on top of the structure. Mr. Tkachuk was also of the view that the structural steel frame used in the erection of the Chlorate IV plant was designed specifically to support the machinery and associated equipment, as well as to provide rigidity.

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

Referring to Exhibit A-2, which is a set of drawings that represent elevational and sectional views of the tall oil depitching plant and the Chlorate IV plant, Mr. Tkachuk explained the relationship between the process equipment and the structure. His testimony was that the spacing of the columns and beams is specifically designed to accommodate the machinery and equipment, which, in the case of the tall oil depitching plant, include a spray condenser, a depitching evaporator, a pitch level tank and a tall oil level tank and, in the case of the Chlorate IV plant, two huge cylinders called crystallizers. That equipment and apparatus are attached to the steel structures. Moreover, stairs and service hatches are designed to provide access to various platform levels for the control, as well as for the maintenance and repair, of the equipment. Mr. Tkachuk also explained that the governing factor in determining the size and the amount of steel necessary was the weight of the equipment. He admitted that a certain amount of steel also supports the roof of the Chlorate IV plant. Mr. Tkachuk's expert report provided a breakdown of the steel by weight involved in each function of the plant. There was no issue as to the method that he applied to establish the weight of steel used in each case to support the equipment and related platforms, walkways, accessways, handrails and ramps. During cross-examination, Mr. Tkachuk affirmed that he would be able to identify any particular element of the frame and columns that support any particular equipment.

Mr. Hugh Norman, President and General Manager of B.C. Chemicals Ltd., also testified at the hearing. He explained that the technology involved in the design of the machinery and apparatus in both plants required their elevation from the ground to a specific height. Mr. Norman also testified that both plants have no storage areas or offices.

In the Tribunal's view, the evidence provided by the appellant supports its position that, but for the steel used in the rectifier building roof and switchgear roof of the Chlorate IV plant, as conceded by counsel for the appellant, the goods in issue are parts of machinery and apparatus within the meaning of paragraph 1(*l*) of Part XIII of Schedule III to the Act. In deciding that those goods are parts, the Tribunal gives weight to the Department of National Revenue's administrative policy<sup>2</sup> set forth in paragraphs 26 and 27 of Excise Memorandum ET 303<sup>3</sup> (Memorandum ET 303).

Paragraph 26 of Memorandum ET 303 provides that access structures such as balconies, platforms, stairways, walkways, ladders and ramps that are adjuncts or adjacent to tax-exempt production machinery or apparatus are exempt from FST, provided they are designed and dedicated to a particular piece of tax-exempt production machinery or apparatus and used by operating personnel in the course of operating the equipment or by service personnel to access tax-exempt production equipment for repair or maintenance purposes. The uncontradicted evidence in this case is that the platforms, walkways, accessways, handrails and ramps were designed to provide access to various platform levels for the control, as well as for the maintenance and repair, of the equipment. Therefore, those goods are exempt from FST as parts of machinery or apparatus.

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2. See, in this regard, *The Deputy Minister of National Revenue for Customs and Excise v. Steel Company of Canada Limited*, 83 D.T.C. 5301, Federal Court of Appeal, File No. A-239-82, June 13, 1983, and *Gene A. Nowegijick v. Her Majesty the Queen*, [1983] 1 S.C.R. 29.

3. Production Equipment, Department of National Revenue, Customs and Excise, March 20, 1989.

As to the structural steel, paragraph 27 of Memorandum ET 303 provides that supports which are designed and committed to support particular machinery or apparatus are regarded as parts for purposes of paragraph 1(*l*) of Part XIII of Schedule III to the Act. The uncontradicted expert evidence in this case is that a specific weight of steel was used for each structure to support the equipment and related platforms, walkways, accessways, handrails and ramps. Moreover, the condition for the application of paragraph 27 of Memorandum ET 303, i.e. that the structural steel be identifiable by design as *bona fide* parts, is met in this instance, as Mr. Tkachuk testified that it is possible to identify any particular element of the frame and columns that support any particular equipment. Furthermore, it is worth noting that, in the *Steel Company* case, the Federal Court of Appeal concluded, firstly, that steel support columns of overhead cranes are parts of machinery or apparatus within the meaning of paragraphs 1(*a*) and 1(*l*) of Part XIII of Schedule III to the Act and, secondly, that there is no need to distinguish the portions of such columns that are designed to support the crane.

Finally, as to counsel for the respondent's main argument that the goods in issue are plants or buildings, the Tribunal notes that, in the *Steel Company* case, Heald, J. also found that nothing in paragraph 1(*a*) of Part XIII of Schedule III to the Act excludes from its application goods that subsequently become attached to realty. The Tribunal finds that this also applies to paragraph 1(*l*), as that provision deals with parts of goods described in paragraph 1(*a*). This interpretation is also supported by paragraph 27 of Memorandum ET 303, which provides that supports of machinery and apparatus still qualify as parts even though, when they are installed or attached, they may also support a building or other structure.

In light of the foregoing and taking into account that the appellant conceded that the steel used in the rectifier building roof and switchgear roof of the Chlorate IV plant identified at Tab 2 of Mr. Tkachuk's expert report is excluded from the exemption, the appeal is allowed in part.

Lise Bergeron  
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Presiding Member

Arthur B. Trudeau  
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Member

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Member