CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, October 18, 1993

Appeal No. AP-92-130

IN THE MATTER OF an appeal heard on March 24, 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 June 30, 1992, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

"AUTOMATIC" SPRINKLER OF CANADA, LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-92-130

"AUTOMATIC" SPRINKLER OF CANADA, LTD. Appellant

and

THE MINISTER OF NATIONAL REVENUE Respondent

The issue in this appeal is whether corner pulleys, used by the appellant in its Range Guard fire-suppression system, are "[f]ire-fighting and fire-detection equipment for installation in buildings" within the meaning of section 5 of Part I of Schedule IV to the Excise Tax Act and, thus, taxable at the lower rate prescribed by paragraph 50(1.1)(b) of the Excise Tax Act. The corner pulleys are used to accommodate 90-degree turns in a cable that runs from the fire-sensing devices to the valve controlling the flow of fire retardant. They are composed of high-temperature aluminum and employ a grooved wheel within which a cable runs.

***HELD**: The appeal is allowed. The corner pulleys were designed specifically for the Range Guard fire-suppression system and are manufactured and sold for no other purpose. They represent apparatus that are essential to the safe and proper functioning of the system. The Tribunal has no doubt that corner pulleys represent fire-fighting equipment, as they are employed solely in a system designed for that very function.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*March 24, 1993*
Date of Decision:	*October 18, 1993*
Tribunal Members:	*Desmond Hallissey, Presiding Member* *Kathleen E. Macmillan, Member* *Lise Bergeron, Member*
Counsel for the Tribunal:	*David M. Attwater*
Clerk of the Tribunal:	*Dyna Côté*
Appearances:	*Roland Gilbert Morris, for the appellant* *Yvonne E. Milosevic, for the respondent*

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-92-130

"AUTOMATIC" SPRINKLER OF CANADA, LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
KATHLEEN E. MACMILLAN, Member
LISE BERGERON, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) from an assessment covering the period from September 1, 1986, to November 30, 1989. The appellant was assessed a net amount of $24,069.67, including interest and penalty calculated to September 30, 1990, on the basis that it remitted federal sales tax at an incorrect rate with respect to corner pulleys. The issue in this appeal is whether the corner pulleys, used by the appellant in its Range Guard fire-suppression system, are "[f]ire-fighting and fire-detection equipment for installation in buildings" within the meaning of section 5 of Part I of Schedule IV to the Act and, thus, taxable at the lower rate prescribed by paragraph 50(1.1)(*b*) of the Act.

The appellant's representative and witness was Mr. Roland Gilbert Morris, who is Vice-President and General Manager of "Automatic" Sprinkler of Canada, Ltd. He testified that the appellant manufactures a wet chemical fire-suppression system called the Range Guard system, which is designed for permanent installation in commercial and institutional kitchens. The system detects fires and suppresses them by use of localized sprays of a liquid chemical agent known as Karbaloy.

As modern commercial kitchen design does not provide space to accommodate fire-suppression equipment, the Range Guard system was designed to distance the equipment from the cooking area. The system utilizes fusible fire-sensing devices (fusible links) that are placed in proximity to the fire-hazard areas. A spring-loaded fusible link is attached by a stainless steel cable (1/16 in. diameter) to a mechanical control box which holds the valve of a cylinder closed. When a fire occurs, the fusible link melts, releasing the tension in the cable and allowing the valve of the cylinder to open. The Karbaloy solution, contained in the cylinder under pressure, is returned to the fire area by piping and released through nozzles.

The steel cable, extending from the fusible links to the control box, is enclosed in conduit. As the fusible links and control box are typically located some distance apart, it is often necessary to lay the cable over and around several obstacles. To accommodate 90-degree turns in the cable, the appellant uses corner pulleys, which serve as fittings to the conduit while allowing for free movement of the cable. Corner pulleys are composed of high-temperature aluminum

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

and employ a grooved wheel within which the cable runs. The wheel turns freely by use of steel ball bearings.

The witness characterized the Range Guard fire-suppression system as "pre-engineered," in that the individual components to be assembled into a functional system are all approved by Underwriters' Laboratories of Canada. A system may employ up to 50 corner pulleys. The appellant only sells to authorized dealers who are trained and certified for installation of the system. All components are sold as separate items and not as a packaged system. The witness testified that the corner pulleys are sold only for use in the Range Guard system and that he was not aware of any other use for them.

The appellant's representative argued that the corner pulleys are an essential component of the Range Guard fire-suppression system. The entire system, including the corner pulleys, must be considered a complete integrated unit and taxable at the lower rate. He noted that many of the components of the system, including the Karbaloy solution, valve and control box, were taxed at the lower rate.

The appellant's representative noted that certain pipes and valves used in the system were also determined to qualify for the lower rate of tax under section 16[2] of Part I of Schedule IV to the Act. He argued that the corner pulleys are "fittings" as identified in section 16. He explained that the Range Guard system initially employed a simple 90-degree elbow on the conduit, which is now contrary to fire regulations. As corner pulleys have the same function as elbows, which are taxed at the lower rate, the corner pulleys should also qualify for the lower tax rate.

Counsel for the respondent argued that the onus is on the appellant to establish that the assessment is incorrect. She submitted that exemption and relief provisions in taxing statutes are to be construed strictly.

Under section 50 of the Act, sales tax is payable on the sale price or volume sold of all goods produced or manufactured in, or imported into, Canada. The rate of tax payable on taxable goods is prescribed by subsection 50(1.1) of the Act. Unless the goods fall within paragraphs 50(1.1)(*a*) to (*c*) of the Act, they are taxable at the general rate prescribed in paragraph 50(1.1)(*d*) of the Act, which was 12 percent commencing April 1, 1986, and 13.5 percent commencing January 1, 1989. Paragraph 50(1.1)(*b*) of the Act provides that goods enumerated in Schedule IV to the Act are taxable at a lower rate, being 8 percent commencing April 1, 1986, and 9 percent commencing January 1, 1990.

Counsel argued that the Range Guard system is, in essence, a set of parts and components, some of which, as individual goods, are specifically and primarily committed to a fire-protection use, and some of which are not thus committed, but serve a fire-protection use solely by reason of their incorporation into the system. It was submitted that only those elements of the system that, taken in isolation, are specifically dedicated to a fire-fighting or fire-detection use qualify for the lower rate of tax. It follows that the goods in issue do not qualify for the lower rate because they are not, in and of themselves, fire-fighting or fire-detection equipment. Isolated from the system, they cannot be said, in either design or

---

2. *16. Pipe, conduit and tubing designed for use in buildings, sewers, irrigation or drainage systems, pipelines and other construction; valves and fittings therefor.*

function, to serve a purpose specifically related to fire fighting or fire detection. Rather, they are individually neutral goods for incorporation into a fire-protection system.

Counsel for the respondent submitted that section 5 of Part I of Schedule IV to the Act cannot be read as applying to a fire-detection or fire-suppression system as a whole, inclusive of all parts, components and hardware necessary for its installation or operation. It is clear from paragraphs 2(*f*), (*r*) and (*u*) of the *Construction Materials Sales Tax Regulations*[3] (the Regulations), enacted under section 35 of Part I of Schedule IV to the Act, that a legislative distinction was intended to be drawn between equipment designed for a special use and the system in which such equipment may be installed in buildings. Consistent with those provisions, the terms "fire-fighting and fire-detection equipment" import a narrower and more specific range of goods than may be incorporated into a complete fire-protection system.

With regard to the various paragraphs of the Regulations cited by counsel for the respondent, the Tribunal notes that, in all cases, it is certain "equipment" that is taxed at the lower rate. Reference to installation in a system is seen as a qualification imposed on that equipment. As such, the equipment must be permanently installed in a system for it to qualify for the lower rate of tax. What these paragraphs illustrate is that equipment can be incorporated into a system and still be entitled to the lower rate of tax. The Tribunal notes that section 5 of Part I of Schedule IV to the Act does not contain this qualification. However, it believes that the fire-fighting or fire-detection equipment may be incorporated into a system that is permanently installed within a building and still qualify for the lower rate of tax.

The Oxford English Dictionary[4] defines "equipment" to include "[t]he state or condition of being equipped," and "[a]nything used in equipping." Similarly, the Gage Canadian Dictionary[5] defines "equipment" to include "the act of equipping" and "the state of being equipped." The former dictionary defines the word "equip" to mean "to provide with what is requisite for efficient action, as arms, instruments, or apparatus of any kind.[6]" The latter dictionary defines "equip" to mean "furnish with all that is needed; fit out; provide.[7]" On this basis, the Tribunal believes that "fire-fighting and fire-detection equipment" includes all that is necessary or required to create an operational fire-fighting or fire-protection unit.

It is an undisputed fact that the corner pulleys were designed specifically for the Range Guard fire-suppression system and that they are manufactured and sold for no other purpose. They represent apparatus that are essential to the safe and proper functioning of the system. The Tribunal has no doubt that corner pulleys represent fire-fighting equipment, as they are employed solely in a system designed for that very function. With regard to the argument submitted by counsel for the respondent that the fire-fighting equipment that qualifies for the lower rate of tax must be specifically and primarily committed to a fire-protection use, the

---

3. C.R.C., c. 587; *2(f) equipment and hardware, not provided for in section 4 of Part I of Schedule V to the Excise Tax Act, designed for permanent installation in a system for the supply of electricity; (r) sewage treatment and disposal equipment for permanent installation in sewerage systems for buildings; (u) water pressure and treatment equipment for permanent installation in water systems for buildings.*
4. Vol. 5, 2nd ed. (Oxford: Clarendon Press, 1989) at 355.
5. (Toronto: Gage Publishing, 1983) at 400.
6. *Supra*, note 4 at 354.
7. *Supra*, note 5.

Tribunal notes that section 5 of Part I of Schedule IV to the Act imposes no such qualification in the sense advanced by counsel. As such, any arbitrary distinction on that basis is unwarranted.

Accordingly, the appeal is allowed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Lise Bergeron
Lise Bergeron
Member