



Ottawa, Tuesday, October 5, 1993

**Appeal No. AP-92-190**

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 August 4, 1992, with respect to a  
notice of objection served under section 81.17 of the  
*Excise Tax Act*.

**BETWEEN**

**STRUCTURAL TECH CORPORATION LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

W. Roy Hines  
W. Roy Hines  
Presiding Member

Michèle Blouin  
Michèle Blouin  
Member

Charles A. Gracey  
Charles A. Gracey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-190**

**STRUCTURAL TECH CORPORATION LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue in this appeal is whether scaffolding qualifies as structural metal under section 21 of Part I of Schedule IV to the Excise Tax Act and, as such, qualifies for the reduced tax rate of 9 percent on construction materials and equipment for buildings, as provided in paragraph 50(1.1)(b) of the Excise Tax Act.*

**HELD:** *The appeal is allowed. The Tribunal notes that The Concise Oxford Dictionary of Current English defines the word "scaffolding" as a "temporary structure of poles or tubes and planks providing workmen with platform(s) to stand on while building or repairing house[s] etc." This definition is in keeping with the Canadian Standards Association's definition of that word provided as evidence. Therefore, a structure can be temporary and the scaffolding in issue is structural metal for structures.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: March 24, 1993  
Date of Decision: October 5, 1993*

*Tribunal Members: W. Roy Hines, Presiding Member  
Michèle Blouin, Member  
Charles A. Gracey, Member*

*Counsel for the Tribunal: Gilles B. Legault*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Rory Pike, for the appellant  
Frederick B. Woyiwada, for the respondent*

**Appeal No. AP-92-190**

**STRUCTURAL TECH CORPORATION LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: W. ROY HINES, Presiding Member  
MICHÈLE BLOUIN, 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) from a determination that denied a refund claim of federal sales tax presented by the appellant and that was later confirmed by the Minister of National Revenue.

The appellant seeks a refund of federal sales tax in the amount of \$119,908.94 on the ground that it sold steel scaffolding that qualifies as structural metal under section 21 of Part I of Schedule IV to the Act and, as such, that it qualifies for the reduced tax rate of 9 percent on construction materials and equipment for buildings, as provided in paragraph 50(1.1)(b) of the Act.

Section 21 of Part I of Schedule IV to the Act reads as follows:

*21. Structural metal and fabricated metal for buildings and other structures.*

(Emphasis added)

Counsel for the appellant argued that scaffolding is a structure and that a structure need not be permanent. Counsel relied upon the clear and ordinary meaning of the word "structure" which, briefly stated, refers to something built or constructed and composed of parts joined together in some definite manner. Counsel argued that the exempting provision does not use the word "permanent" and that there is no particular reason to add this word to the statute. Moreover, the word "scaffolding" is defined in the Canadian Standards Association booklet<sup>2</sup> as "any temporary elevated platform and its supporting structure used for supporting workers, or workers, equipment, and materials." More generally, counsel stated that section 31 of Part I of Schedule IV to the Act also used the words "Buildings or other structures" and, under that exempting provision, the Department of National Revenue has accepted structures that neither are permanent nor sit on permanent foundations such as prefabricated skid-mounted buildings or floating dry docks. Lastly, counsel contended that scaffolding is considered a structure and part of a structure of iron or steel within the meaning of heading No. 73.08 of the *Customs Tariff*.<sup>3</sup>

---

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

2. Access Scaffolding for Construction Purposes, A National Standard of Canada, CAN/CSA-S269.2-M87 at 14.

3. R.S.C. 1985, c. 41 (3rd Supp.).

Counsel for the respondent argued that the onus lies on the appellant to demonstrate that the goods in issue fall squarely within the meaning of the exemption. Counsel contended that it is established that a structure is something of substantial size which is built up from component parts and intended to remain permanently on a foundation. Counsel questioned the fact that the scaffolding in issue may or may not be of substantial size, but asserted that the scaffolding is not intended to remain permanently on a permanent foundation. Counsel also referred the Tribunal to the heading of Part I of Schedule IV to the Act which reads "Construction Materials" and refers to materials like bricks, chimneys, floor tiles, lumber, etc., which are all materials that are normally constructed permanently into a building or other structure. Counsel also relied upon a decision of the Supreme Court of Canada, *British Columbia Forest Products Limited v. The Minister of National Revenue*,<sup>4</sup> which dealt with the interpretation of the words "building or other structure" contained in regulations adopted under the *Income Tax Act*.<sup>5</sup> In that case, the Court referred to an English decision where "structure" was defined as "something of substantial size which is built up from component parts and intended to remain permanently on a permanent foundation."<sup>6</sup> That decision was also cited by the Alberta Court of Appeal in *Canadian Imperial Bank of Commerce v. Alberta (Assessment Appeal Board); Edmonton (City) v. Alberta (Assessment Appeal Board)*,<sup>7</sup> a matter dealing with the *Alberta Municipal Taxation Act*,<sup>8</sup> which defined the word "improvement" in terms of buildings or structures.

In the Tribunal's view, it is worth noting that the decisions cited by counsel for the respondent had to do with buildings or structures in terms of capital cost allowance under the *Income Tax Act* or improvements under a municipal taxation statute, while the case at hand, as pointed out by counsel, deals with buildings and structures in terms of construction materials. The Tribunal believes that the degree of permanency may be of greater importance when considering a statute that deals with capital cost allowances or improvements under municipal taxation than it is in the present case. Thus, such cases can be easily distinguished from the present appeal. The Tribunal notes, in this regard, that The Concise Oxford Dictionary of Current English<sup>9</sup> defines the word "scaffolding" as a "temporary structure of poles or tubes and planks providing workmen with platform(s) to stand on while building or repairing house[s] etc." (emphasis added). This definition is in keeping with the Canadian Standards Association's definition of that word provided by counsel for the appellant. It thus seems that structures can be temporary.

The question now is whether section 21 of Part I of Schedule IV to the Act can be interpreted to encompass such temporary structures. In examining the various sections of Part I of Schedule IV to the Act, one observes that Parliament, on several occasions, added the words "for permanent installation" or "permanently." If those words had been used in section 21, the Tribunal would have had to give effect to those words and, consequently, the goods in issue could not have been included within the ambit of that exempting provision. The Tribunal, however, finds that section 21 is broad enough to permit structural metal for scaffolding to be considered structural metal for "other structures."

---

4. [1972] S.C.R. 101.

5. R.S.C. 1952, c. 148.

6. *Supra*, note 4 at 112.

7. (1992), 89 D.L.R. (4th) 20.

8. R.S.A. 1980, c. M-31.

9. Seventh Edition (Oxford: Clarendon Press, 1988) at 933.

In light of the foregoing, the appeal is allowed.

W. Roy Hines

W. Roy Hines  
Presiding Member

Michèle Blouin

Michèle Blouin  
Member

Charles A. Gracey

Charles A. Gracey  
Member