CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, December 7, 1995

Appeal No. AP-92-264

IN THE MATTER OF an appeal heard on March 22 and 23, 1995, 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 October 15, 1992, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

R.S. HARRIS LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed in part. The matter is referred back to the respondent to determine which transactions covered by the assessment dated March 30, 1990, were for remanufactured lumber not exceeding 90 inches in length, described on commercial invoices or customs documents as knocked down boxes, crates or pallets or using wording to that effect.

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Lyle M. Russell
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Michel P. Granger
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UNOFFICIAL SUMMARY

Appeal No. AP-92-264

R.S. HARRIS LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 81.19 of the Excise Tax Act of an assessment of the Minister of National Revenue dated March 30, 1990. The issue in this appeal is whether certain goods exported to the United States by the appellant between January 1, 1988, and December 31, 1989, and described as knocked down boxes and crates, pallet stock and bed frame components were subject to the export charge under the Softwood Lumber Products Export Charge Act.

***HELD**: The appeal is allowed with respect to Exhibits A-14 and A-15 and to remanufactured lumber not exceeding 90 inches in length that was described on commercial invoices or customs documents as knocked down boxes, crates or pallets or using wording to that effect. The appeal is dismissed with regard to all other goods covered by the respondent's assessment. Lumber exceeding 90 inches in length is chargeable under section 4 of the Softwood Lumber Products Export Charge Act and Part II of the Schedule regardless of whether it is destined for assembly into boxes, crates or pallets. Box spring mattress frame components are subject to the export charge under section 6 of the Softwood Lumber Products Export Charge Act and Part III of the Schedule, as is remanufactured lumber not exceeding 90 inches in length described as pallet stock, crating stock or box stock, not exported as complete units of such products. The matter is referred back to the respondent to determine which transactions covered by the assessment were for remanufactured lumber not exceeding 90 inches in length, described on commercial invoices or customs documents as knocked down boxes, crates or pallets or using wording to that effect.*

Place of Hearing:	*Winnipeg, Manitoba*
Date of Hearing:	*March 22 and 23, 1995*
Date of Decision:	*December 7, 1995*
Tribunal Members:	*Lyle M. Russell, Presiding Member* *Arthur B. Trudeau, Member* *Robert C. Coates, Q.C., Member*
Counsel for the Tribunal:	*Joël J. Robichaud*
Clerk of the Tribunal:	*Anne Jamieson*
Appearances:	*Ingrid Lincoln, for the appellant* *Anne M. Turley and Jennifer Oulton, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-92-264

R.S. HARRIS LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: LYLE M. RUSSELL, Presiding Member
ARTHUR B. TRUDEAU, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] of an assessment of the Minister of National Revenue dated March 30, 1990. The appellant was assessed $162,022.95 for export charges, penalty and interest pursuant to the *Softwood Lumber Products Export Charge Act*[2] (the Act) in respect of certain goods exported to the United States by the appellant between January 1, 1988, and December 31, 1989. The assessment followed an audit of the appellant's books of account which was requested by the U.S. government pursuant to a 1986 memorandum of understanding with the Canadian government concerning trade in certain softwood lumber products (the MOU). The appellant served a notice of objection dated June 6, 1990, that was disallowed by the respondent in a decision dated October 15, 1992.

During the period covered by the audit, the appellant was a wholesale distributor of lumber to markets in both Canada and the United States. It also owned half the shares of a pallet manufacturing company, Quality Pallet. At the time of the hearing, the appellant was a shell company, having ceased to be active in the lumber business in 1991. The Act was enacted to give effect to Canada's obligations under the MOU. In return for the U.S. government agreeing to terminate a countervailing duty investigation on Canadian softwood lumber products, the Canadian government agreed to collect a 15 percent export charge on certain softwood lumber products (generally referred to as dimensional lumber) and a lesser charge on exports of certain "further manufactured" or "remanufactured" products exported to the United States. The latter charge was to equal 15 percent of the value of the dimensional lumber used to make the exported "remanufactured" products. The agreed list of "remanufactured" products was amended on December 16, 1987. The Schedule to the Act (the Schedule) was amended accordingly. The amendment took effect on January 1, 1988. Lumber and wood products originating in British Columbia and the Atlantic provinces were generally exempt from the charge.

For purposes of this appeal, the relevant provisions of the Act and the Schedule read, in part, as follows:

> *4.(1) There shall be imposed, levied and collected a charge determined under this Act on softwood lumber products set out in Part II of the schedule that are exported to the United States after January 7, 1987.*

1. R.S.C. 1985, c. E-15.
2. R.S.C. 1985, c. 12 (3rd Supp.).

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5.(1) Subject to section 6, the charge imposed under subsection 4(1) on softwood lumber products set out in Part II of the schedule shall be an amount equal to

(a) such percentage of the export price of the softwood lumber products, not exceeding fifteen per cent thereof, as may be prescribed; or

(b) where no percentage is prescribed for the purposes of paragraph (a), fifteen per cent of the export price of the softwood lumber products.

6.(1) Where any softwood lumber products set out in Part III of the schedule are subject to a charge imposed under subsection 4(1), the amount of the charge shall be equal to

(a) such percentage of the value of the softwood lumber used in the manufacture of the products, not exceeding fifteen per cent thereof, as may be prescribed; or

(b) where no percentage is prescribed for the purposes of paragraph (a), fifteen per cent of the value of the softwood lumber used in the manufacture of the products.

SCHEDULE

PART I

"specialty remanufactured cut stock" means remanufactured lumber products, not exceeding 90 inches in length, that are cut to size in dimensions specified by customers to suit a particular use after further manufacture and are produced, in a secondary milling operation, commonly for industrial type applications;

PART II

1. Softwood lumber, rough, dressed or worked.

PART III

1. The following softwood lumber products:

(u) specialty remanufactured cut stock of the following descriptions, namely,

(i) pallet stock, consisting of remanufactured stock supplied to pallet manufacturers for further manufacture into pallets, not including complete pallets whether assembled or not,

(ii) box spring mattress frame components supplied to customer specifications,

(iii) crating stock, not including complete units whether assembled or not,

(iv) box stock, not including complete units whether assembled or not,

The issue in this appeal is whether the Act applies to goods described by the appellant in its commercial invoices and customs documents as knocked down boxes, crates or pallets, "crating material to end user," "premanufactured bed frame material to end user" and other similar descriptions. The appellant's position was that the goods in issue were either explicitly excluded from paragraph 1(*u*) of Part III of the Schedule as complete but unassembled crates, boxes and pallets or not clearly described therein and, hence, exempt from the export charge. The respondent's position was that the goods described as pallet stock, or knocked down crates and boxes, were in fact dimensional lumber and, hence, subject to a charge of 15 percent and that box spring mattress frame components were clearly covered by paragraph 1(*u*) and subject to a charge of 15 percent of the sales value of the lumber.

At the hearing, counsel for the appellant called four witnesses, while counsel for the respondent called one witness. The appellant's first witness, Mr. Harvey Dueck, was employed by R.S. Harris Ltd. between 1985 and 1989 as Office Manager and Computer Programmer. He was responsible for invoicing, inventory control, the generation of financial reports and compilation of monthly returns for payment of the export charge on lumber and lumber products exported to the United States. He explained the difficulty that he had, particularly in the first six months after the export charge was introduced, in getting reliable information from the Department of National Revenue (Revenue Canada) concerning the products that were covered under the Act and the conditions under which certain products might be exempt. Mr. Dueck testified that, despite collecting numerous communiqués from the excise tax authorities, having numerous conversations with Revenue Canada officials and exchanging extensive correspondence with them, he still had no clear idea, when he left the appellant in May 1989, as to whether certain products were exempt. Mr. Dueck testified that, on the basis of information obtained from Revenue Canada officials, it was his understanding that pallet stock, crating stock, boxing stock and bed frame and furniture stock were all exempt from the charge, as long as they were precut to the right dimensions for assembly into pallets, crates, boxes, bed frames or furniture without further manufacture.

The appellant's second witness, Mr. Ken Doerksen, currently in production management at Great Northern Remanufacturing, was the owner of Ken Doer Custom Mill Work between 1987 and 1989. During this period, his company did custom remanufacturing of economy and utility grade SPF (spruce/pine/fir) dimensional lumber for the appellant. He explained that economy grade lumber does not have the strength required for building construction and is normally used to make crates, boxes and pallets. Mr. Doerksen's company would perform various operations on lumber supplied by the appellant, such as cutting it to various lengths (for example, 37, 39, 45 and 71 inches), resawing it to different thicknesses, planing it, cutting notches in it, chamfering or bevelling the edges, rounding the corners or dog-earing the ends. Mr. Doerksen testified that the written instructions from the appellant would normally not indicate the end use of the remanufactured lumber, but that he would often know this from conversations that he would have with the appellant's employees or that he would be able to determine the end use on the basis of the dimension of the lumber supplied and the operations that needed to be performed. For example, if he were given 2 x 4s to be cut to lengths of 48 inches and notched 6 inches from each end with notches of 1 1/2 x 9 inches, he would know that they were to be used to make two-way pallets. Mr. Doerksen explained that the remanufactured lumber would not leave his mill as complete, knocked down sets of the final product. Instead, using pallet stock as an example, he explained that all the 2 x 4s would be shipped in the same "lift," and the 1 x 6s for the top and bottom slats would be shipped in another lift.

The appellant's third witness, the principal of the company, Mr. Robert S. Harris, explained how boxes, crates, pallets and bed frames are constructed and how his company supplied the final assemblers of these products with the necessary wooden components. He said that, to save on shipping costs when supplying pallet stock to a customer, the appellant would ship the 2 x 4 runners and the 1 x 4 boards in separate bundles and often on separate trucks. However, in his view, the appellant was shipping knocked down pallets. The appellant was supplying finished components in sufficient quantities to enable the customer to assemble a predetermined number of the finished products. The same was true with respect to boxes, crates and bed frames. Mr. Harris was also of the view that the pallets, boxes and crates assembled in the United States from components supplied by the appellant were dunnage, since they would be used as shipping containers or to carry other products.

Mr. Harris commented on invoices and other documents presented into evidence that pertained to several of the transactions covered by the assessment. In each case, he described the material, the "remanufacturing" performed by the appellant prior to export as prescribed by its customers and how, based

on his knowledge of the customer's business, the material might be used. According to Mr. Harris, Exhibits A-13 and A-16 covered remanufactured "crating material" exceeding 90 inches in length, while Exhibits A-12, A-14 and A-15 related to bed frames, boxes and crating components ranging in length from 37 1/2 inches to 79 inches. Mr. Harris explained that, by 1989, he had not been able to gain a clear understanding of which products were subject to the export charge and which were exempt under the Act, despite several discussions with Revenue Canada officials. He testified that he relied on information received from Revenue Canada officials in deciding whether or not to remit the export charge to the respondent.

During cross-examination, Mr. Harris was asked to comment on Exhibits B-2 to B-5. He noted that the goods were described as "crates knocked down," but that these words did not appear on the matching purchase orders. The orders were for a truckload of lumber in standard mill lengths, thicknesses and widths. The buyer in both cases was a lumber wholesaler in Ontario. One truckload, however, was shipped to Mountain Top, Pennsylvania, and the other to Beckley, West Virginia. Mr. Harris testified that the goods would have been invoiced as "crates knocked down" on the basis of a telephone call from the buyer that this was the intended use. Mr. Harris estimated that, in 1988 and 1989, the appellant exported approximately $10 million worth of lumber to the United States. Of this, about $2 million would have been exempt from the export charge as being of B.C. origin, and the appellant would have collected and remitted the export charge on about $7 million, leaving $1 million in knocked down crates and other products which Mr. Harris considered to be exempt.

Counsel for the appellant sought to have her fourth witness, Ms. Roslyn Nugent, qualified as an expert in dunnage on the basis that she owned and operated a wholesale lumber business and a lumber manufacturing business and that she had some knowledge of lumber standards and grading. Counsel for the respondent objected. The Tribunal refused to qualify Ms. Nugent as an expert. It did, however, rule that it would hear her evidence and give it the weight that it deserved. She testified that she agreed with the definition of "dunnage" found in the Random Lengths' lumber trade journal.[3] According to this definition, dunnage is low-grade lumber used to bind, bundle or carry products during shipment. She explained that any grade of lumber can be used as dunnage, but that cheaper grades are normally used. During Ms. Nugent's testimony, it became evident to the Tribunal that lumber is not normally described as "dunnage" until it is combined with the goods that it is destined to carry or protect.

The respondent's witness, Mr. Neils Larsen, a senior auditor with Revenue Canada, performed the audit of the appellant's accounts. He explained that the audit covered 285 invoices. From purchase orders and other records, he was able to determine that the lumber covered by 265 of the invoices originated in provinces other than British Columbia. He determined that the lumber in 20 of the transactions originated in British Columbia and, thus, was exempt from the export charge. Mr. Larsen explained that he examined in detail the descriptions on the invoices and other records of the appellant and that he spoke to the appellant's employees in an effort to determine the nature of the goods and their status under the Act. In some cases, he telephoned the U.S. customer to determine the use to which the goods were put.

Mr. Larsen noted that 13 of the transactions involved bed frame components. As such goods were listed in Part III of the Schedule, he ruled that they were subject to the export charge. Many of the other invoices issued between May and October 1989 for goods generally described as "packing boxes (knock down)" were for shipments of dimensional lumber up to 20 feet long, up to 10 inches wide and 2 inches thick. According to Mr. Larsen, these were not knocked down boxes. In his view, to qualify as unassembled boxes for purposes of the Act, the shipment had to contain the right number of each component

3. (Eugene: Random Lengths, 1952-).

needed to make a specified number of boxes. He testified that Mr. Harris, after learning of this, tried to argue that the goods should be exempt from the export charge because they were dunnage. Mr. Larsen testified that he only saw this word used on 2 of the 285 invoices covered by the audit. He also testified that he never saw a product described as a "pallet." However, in many instances, he saw products described as pallet material, crate material, pallet/crate material, pre-manufactured crate material or knock down crates. If purchase orders existed, they were usually for bundles of 2 x 4s or other dimensions of a specified grade of lumber. They never identified a specific number of pallets. Lacking sufficient information to conclude that such transactions involved unassembled pallets or crates, Mr. Larsen ruled that these goods were subject to the export charge. According to Mr. Larsen, the appellant only remitted $203,136 in export charges from July 1, 1988, to June 30, 1989. He, therefore, disagreed with Mr. Harris' testimony that the appellant had paid the export charge on approximately $7 million worth of lumber.

During cross-examination, Mr. Larsen acknowledged that some of the appellant's employees appeared to be confused with respect to the application of Part III of the Schedule. He explained that this could have been due, in part, to certain ambiguous information provided by Revenue Canada officials in the earlier stages of the legislation. However, he added that any confusion should have been clarified by subsequent ruling cards and discussions between Revenue Canada officials and the appellant's employees. He disagreed with suggestions that the appellant had taken all the necessary steps to determine which goods were covered by the Act.

Counsel for the appellant argued that the Act was ambiguous and that any ambiguity must be resolved in favour of the taxpayer. She argued that, in resolving the ambiguity, the Tribunal can give weight to erroneous advice given to the appellant by Revenue Canada officials. According to counsel, the ambiguity in the legislation arose as a result of several factors, which she listed in her argument. In her view, there existed confusion as to what section of the Act imposed a charge on goods listed in Part III of the Schedule and it was difficult to determine which goods were exempt under that Part. The amendment made to the Schedule also added confusion. She argued that the definition of "specialty remanufactured cut stock" was unclear. There appeared to be an exemption for complete units of boxes, crates and pallets, but there was no clear indication as to when a unit was considered complete. She argued that Revenue Canada, itself, appeared to be confused. For example, the evidence showed that, originally, it had insisted that, for a box to be considered a complete unit, all the components needed to make the box had to be bundled together when shipped, while, eventually, it considered that, as long as the shipment included the right number of each component needed to make a specified number of boxes, it did not matter that the components were shipped in separate bundles.

Counsel for the appellant argued that most of the goods in issue were exempt from the export charge, as they were unassembled boxes, crates or pallets. The evidence shows that pallet stock was shipped by the appellant to pallet makers, that its customers included brass and steel manufacturers that might have required lumber for crating, boxing and shipping purposes, and that certain sizes of low-grade lumber described on shipping documents as knocked down pallets, crates or boxes were complete units even though they may not have been shipped in one truckload. She argued that the evidence shows that "crating stock" was such a variable term that various combinations of different sizes of lumber could have been considered a crate. According to counsel, "pallet stock" was also an ambiguous term. She argued that, if a piece of pallet stock was manufactured so that no further manufacturing was required, for example, if it was grooved or notched, it ceased to be specialty remanufactured cut stock and became exempt from the export charge under the Act. Similarly, she argued that, for boxes and crates to be considered complete units, very little manufacturing was required. Counsel argued that, in any event, the goods were dunnage and, therefore, exempt from the export charge.

It was counsel for the appellant's position that, if a bed frame had been totally manufactured, but not assembled, it fell outside the definition of "specialty remanufactured cut stock" and was, therefore, exempt from the export charge. Counsel referred to the Tribunal's decision in *Bois-Aisé de Roberval Inc. v. The Minister of National Revenue*[4] and argued that a charge should not be imposed on particular goods without a clear provision making them subject to a charge under the legislation. Alternatively, counsel submitted that, if the Tribunal found that the goods in issue were subject to the export charge under the Act, they should be chargeable under Part III of the Schedule at a reduced rate based on the value of the lumber before remanufacture, rather than at 15 percent of their sales value, as was done in the assessment.

Counsel for the respondent argued that any reference to *Bois-Aisé de Roberval* was irrelevant, as that appeal dealt with the period before the amendments to the MOU and the Schedule that made bed frame components subject to a charge under Part III of the Schedule. They argued that the key to understanding the coverage of paragraph 1(*u*) of Part III was the definition of "specialty remanufactured cut stock" found in Part I and, in particular, to the stipulation that such stock does not include products exceeding 90 inches in length. Any pallet, box or crate components exceeding 90 inches in length fell outside the definition and were subject to the export charge under Part II. The evidence shows that most of the goods in issue exceeded 90 inches in length, except for bed frame components which, counsel argued, were subject to the export charge as of January 1, 1988, regardless of whether they had been manufactured to the point of being ready for assembly into the final product. It was their submission that the goods in issue not exceeding 90 inches in length were not exempt as complete but unassembled boxes, crates or pallets because there was no evidence that each shipment contained the right number of each component to make a complete box, crate or pallet or that the appellant's customers had ordered such goods as opposed to plain lumber. Furthermore, the goods in issue could not be considered dunnage. Counsel also argued that the goods in issue originated in provinces to which the Act applied and, as such, could not be exempt on the basis that they originated in British Columbia. Finally, counsel submitted that there had been no misrepresentation by Revenue Canada officials to the appellant's employees. Even if there had been, they argued that the respondent was not bound by such misrepresentation.

In reply argument, counsel for the appellant maintained that the Tribunal's decision in *Bois-Aisé de Roberval* was indeed relevant, as it stands for the proposition that softwood lumber further manufactured than "rough, dressed or worked" is not covered by Part II of the Schedule. She argued that the goods in issue were sufficiently remanufactured to remove them from Part II. She also reiterated her view that the Act contains no direct charging section for Part III and that the length of the lumber was irrelevant in determining whether or not it was subject to the export charge. She felt that the sample of invoices that was introduced into evidence was very small. Finally, she argued that the principle that the Crown is not bound by the representations of its servants only applies when dealing with clear, peremptory provisions of law, which was not the case here.

Dealing with this last point first, the Tribunal finds no evidence of misrepresentation by servants of the Crown. It can certainly be said that Mr. Harris and his employees had great difficulty understanding the coverage of the Act as it applied to their business, but this appears to have been mainly due to the complexity of the legislation itself and the refinements of its terms and administration that were introduced as a result of ongoing discussions between Canadian and U.S. officials. A contributing factor may also have been the appellant's apparent emphasis throughout the period covered by the audit on searching for product categories that could be ruled to be exempt under the Act. Mr. Dueck appears to have been particularly persistent in this regard and to have been reluctant to take "no" for an answer when dealing with Revenue Canada. In fact,

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4. Appeal Nos. AP-90-169 and AP-91-100, March 20, 1992.

the Tribunal finds the written advice given to the appellant by Revenue Canada, as exemplified by Exhibits A-6 and B-1, to be considerably easier to understand than alleged by witnesses and counsel for the appellant.

There appears to be no issue with respect to lumber of B.C. origin. The Tribunal also finds the issue of dunnage to be irrelevant. According to the evidence, lumber becomes dunnage only when combined with other goods to protect or carry them during shipment. Whether it becomes lumber again once the other goods have been unpacked at destination is less clear, but not germane to the Tribunal's deliberations in this case. There is no evidence that any of the goods in issue were being used as dunnage when they crossed the border into the United States. That they might have been so used at some time after their exportation from Canada does not remove them from the ambit of the Act.

The Tribunal agrees with counsel for the appellant that it is not clear which section of the Act authorizes an export charge on the goods listed in Part III of the Schedule. However, in the Tribunal's view, it is clear from both section 6 of the Act and paragraph 4(b) of the MOU that such a charge is contemplated. The Tribunal is also of the view that goods in Part III are considered further manufactured versions of some of the goods listed in Part II and, thus, that Part III and section 6 are, in effect, relieving provisions specifying a charge of less than 15 percent of the export price which would have applied if they had remained chargeable under section 4 and Part II.

Apart from this question, the Tribunal does not believe that the statute, complex though it may be, is ambiguous. Any remaining ambiguity stems from the nature of the evidence as to what products were actually exported to the United States in the transactions examined during the audit. The Tribunal agrees with counsel for the respondent's argument that lumber products exceeding 90 inches in length are subject to the export charge under Part II of the Schedule, whether or not they were exported as complete or incomplete products, assembled or unassembled. Furthermore, box spring mattress frame components are subject to the export charge under Part III at any stage of the manufacturing process if not exceeding 90 inches in length. The evidence shows that all such products exported to the United States during the audit period were of that length. The Tribunal, therefore, finds no reason to interfere with this part of the respondent's assessment.

Pursuant to paragraph 1(*u*) of Part III of the Schedule, complete pallets, crates and boxes not exceeding 90 inches in length, whether assembled or not, are exempt from the export charge under the Act. Remanufactured lumber not exceeding 90 inches in length described as pallet stock, crating stock or box stock, not exported as complete units of such products is, however, subject to the export charge under this paragraph. It is not clear from the evidence precisely what the appellant was shipping to the United States during the period covered by the audit. The Tribunal is, however, prepared to give the appellant the benefit of the doubt and finds that any lumber not exceeding 90 inches in length, described on commercial invoices or customs documents as knocked down crates, boxes or pallets or using wording to that effect, is exempt from the export charge, even if there was no written indication on the invoice or other records of the appellant that a certain number of boxes, crates or pallets had been ordered by the customer. In the Tribunal's view, Revenue Canada's practice of requiring such proof before according an exemption for unassembled boxes, crates and pallets was quite reasonable. However, the Tribunal accepts Mr. Harris' testimony that the appellant was shipping knocked down boxes and crates in the transactions covered by Exhibits A-14 and A-15. The Tribunal, therefore, considers these two transactions to be exempt from the export charge. Only a small sample of transactions was examined during the hearing. The Tribunal, therefore, refers the matter back to the respondent to determine which transactions covered by the assessment were for remanufactured lumber not exceeding 90 inches in length, described on commercial invoices or customs

documents as knocked down boxes, crates or pallets or using wording to that effect. The exemption should not, however, be accorded to goods simply described as crating material, pallet stock, boxing material to end user or using wording to that effect, unless the invoice or customer order specifically shows that crates, boxes or pallets were ordered by the customer or were shipped by the appellant.

Accordingly, the appeal is allowed with respect to remanufactured lumber not exceeding 90 inches in length that was described on commercial invoices or customs documents as knocked down boxes, crates or pallets or using wording to that effect. The appeal is dismissed with regard to the remainder of the goods covered by the assessment. The matter is referred back to the respondent to determine which transactions covered by the assessment were for remanufactured lumber not exceeding 90 inches in length, described on commercial invoices or customs documents as knocked down boxes, crates or pallets or using wording to that effect.

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