



Ottawa, Friday, May 27, 1994

Appeal No. AP-92-267

IN THE MATTER OF an appeal heard on November 29, 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 October 30, 1992, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**HOWE SOUND PULP AND PAPER LIMITED**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Arthur B. Trudeau  
Arthur B. Trudeau  
Presiding Member

Charles A. Gracey  
Charles A. Gracey  
Member

Lise Bergeron  
Lise Bergeron  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-267**

**HOWE SOUND PULP AND PAPER LIMITED**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant is a manufacturer of pulp and paper. The goods in issue are ready-mix concrete, reinforcing steel and prefabricated hollow core covers which were used in the erection of reinforced concrete structures, more precisely, five tanks and one roof, that form part of an effluent treatment system at the appellant's pulp and paper mills. There are two issues in this appeal. The first issue is whether the ready-mix concrete, reinforcing steel and prefabricated hollow core covers are tax-exempt goods under subsection 51(1) of the Excise Tax Act (the Act) and Part XIII of Schedule III to the Act as: (1) apparatus sold to or imported by the appellant for use directly in the detection, measurement, prevention, treatment, reduction or removal of pollutants attributable to the manufacture or production of goods; (2) parts for those apparatus; or (3) articles and materials used in their manufacture, within the meaning of paragraphs 1(b), 1(l) and 1(o), respectively, of Part XIII of Schedule III to the Act. The second issue is whether the goods in issue are tax-exempt under the provisions of paragraph 2(d) of Part XIII of Schedule III to the Act as materials consumed or expended by the appellant directly in the treatment, reduction or removal of pollutants described in paragraph 1(b) of Part XIII of Schedule III to the Act.*

**HELD:** *The appeal is allowed. The prefabricated hollow core covers are component parts of an apparatus in their own right and are, therefore, exempt under paragraph 1(l) of Part XIII of Schedule III to the Act. The remaining goods in issue, the ready-mix concrete and reinforcing steel, are materials that qualify for tax exemption under paragraph 1(o) of Part XIII of Schedule III to the Act, as they were used by the appellant in the erection of five tanks and a roof over a reactor, which are components of an effluent treatment system used for the removal of pollutants attributable to the manufacture or production of goods.*

*Place of Hearing: Vancouver, British Columbia*

*Date of Hearing: November 29, 1993*

*Date of Decision: May 27, 1994*

*Tribunal Members: Arthur B. Trudeau, Presiding Member  
Charles A. Gracey, Member  
Lise Bergeron, 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-92-267**

**HOWE SOUND PULP AND PAPER LIMITED**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member  
CHARLES A. GRACEY, Member  
LISE BERGERON, 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 rejected, in part, a federal sales tax refund application filed by the appellant. The determination was later confirmed by the Minister of National Revenue; hence the appeal before the Tribunal.

The appellant is a manufacturer of pulp and paper. The goods in issue are ready-mix concrete, reinforcing steel and prefabricated hollow core covers which were used in the erection of reinforced concrete structures, more precisely, five tanks and one roof, that form part of an effluent treatment system at the appellant's pulp and paper mills.

There are two issues in this appeal. The first issue is whether the ready-mix concrete, reinforcing steel and prefabricated hollow core covers are tax-exempt goods under subsection 51(1) of the Act and Part XIII of Schedule III to the Act as: (1) apparatus sold to or imported by the appellant for use directly in the detection, measurement, prevention, treatment, reduction or removal of pollutants attributable to the manufacture or production of goods; (2) parts for those apparatus; or (3) articles and materials used in their manufacture, within the meaning of paragraphs 1(b), 1(l) and 1(o), respectively, of Part XIII of Schedule III to the Act. The second issue is whether the goods in issue are tax-exempt under the provisions of paragraph 2(d) of Part XIII of Schedule III to the Act as materials consumed or expended by the appellant directly in the treatment, reduction or removal of pollutants described in paragraph 1(b) of Part XIII of Schedule III to the Act.

The appellant operates a new installation in Port Mellon, British Columbia, where it produces newsprint and kraft pulp. At the hearing, the Tribunal heard the expert testimony of Mr. Miro Hejzlar, an engineer and Manager, Engineering Services, for Howe Sound Pulp and Paper Limited, who was responsible for the design and construction of the effluent treatment system. As millions of litres of water are used daily in the production of pulp and newsprint, Mr. Hejzlar explained that the effluent that results from the production process must be treated in accordance with environmental regulations before it is discharged into the ocean. The treatment of the effluent includes its passage through a pump and piping system, that is, through a primary clarifier, a mixing tank, a cooling tower, a UNOX reactor, one of two

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

secondary clarifiers and, finally, a sludge thickener. Except for the mixing tank and the cooling tower, all the other tanks are made of steel-reinforced concrete. A prefabricated hollow core roof covers the UNOX reactor.

From the evidence gathered at the hearing and the documents on file, the effluent treatment process may be summarized as follows. The effluent from the kraft pulp mill contains fibre rejects, wood resins and chlorinated organic compounds. The effluent from the newsprint mill is mainly composed of organic resins that result from the grinding of the wood. Before the effluent is sent to the primary clarifier, any large wooden particles contained therein are removed. The primary clarifier is a huge tank, approximately 185 ft. in diameter and 18 ft. in depth, with a sloping bottom designed for the settlement and removal of fibrous substances. In the middle of the tank, a central pivot supports a long boom that stretches across the radius of the tank and revolves, slowly drawing a rake which separates the fibrous substances from the liquid. From the primary clarifier, the effluent is piped to a mixing tank where it is combined with the stream of effluent coming from the bleaching process and which is contaminated with different acids. The mixed stream is sent to a cooling tower, as a specific temperature is necessary for the UNOX reactor to properly fulfil the next operation, which is the further removal and digestion of fibrous substances from the effluent. Digestion occurs by introducing a variety of micro-organisms into the effluent. To provide the energy required by these micro-organisms, ammonia- and phosphate-based fertilizers are also added to the effluent.

The UNOX reactor is a rectangular structure which measures 282 ft. in length, 140 ft. in width and 26 ft. in depth. It has a roof made of prefabricated hollow core covers, on top of which is poured a 3-in. cap of concrete reinforced with wire mesh, making a one-piece airtight roof. The roof is necessary because oxygen is introduced under pressure into the effluent to speed the digestion process and to maintain the living micro-organisms that are used in the process. Agitators hanging from the roof mix the effluent. The reactor's infrastructure is composed of two rows of chambers, each consisting of four compartments. The size of the compartments permits a precise flow and a proper mixing velocity in the treatment of the effluent which, at full mill production stream, takes six hours to pass through the UNOX reactor.

The mixture then goes to one of the secondary clarifiers, a structure similar to the primary clarifier, where the micro-organisms are separated from the effluent stream. During that process, approximately 50 percent of the micro-organisms are sent back to the UNOX reactor. The rest is sent to the sludge thickener where the moisture is removed, the separated liquids sent back to the treatment system and the sludge is sent to the boiler heaters where it is burned. The treated stream is finally discharged through a tank into the ocean.

The argument of counsel for the respondent that the ready-mix concrete and the reinforcing steel are not apparatus and machinery within the meaning of paragraph 1(b) of Part XIII of Schedule III to the Act is, in the Tribunal's view, unassailable. That leaves for consideration the issue of whether ready-mix concrete and reinforcing steel, which were used to construct the circular tanks and the walls and chambers of the UNOX reactor, as well as to pour the concrete over the prefabricated hollow core covers of the UNOX reactor, are materials. The Tribunal is of the view that these goods are materials that qualify under paragraph 1(o) as "articles and materials for use in the manufacture of goods described in paragraphs (a) to (n)," and more specifically, described in paragraph 1(b) which reads as follows:

*machinery and apparatus sold to or imported by manufacturers or producers for use by them directly in the detection, measurement, prevention, treatment, reduction or removal of pollutants to water, soil or air attributable to the manufacture or production of goods.*

The Tribunal is satisfied, from the evidence and from a review of *Pillar Construction Ltd. v. The Minister of National Revenue*<sup>2</sup> cited by counsel for the appellant, that the five tanks which were erected with the goods in issue are apparatus, as they are made of interrelated parts and serve the function of containing and treating soiled water. In the *Pillar* case, the Tribunal found that dictionaries give the word "apparatus" the meaning of: (1) a collection or set of materials, instruments, appliances, or machinery designed for a particular use; (2) any compound instrument or appliance designed for a specific mechanical or chemical action or operation; and (3) any complex device or machine designed or prepared for the accomplishment of a special purpose. The Tribunal, in that case, emphasized that an apparatus is made of a number of interrelated parts, each having a definite function. The Tribunal is satisfied, in this case, that the tanks meet one or more of the above-cited definitions.

The Tribunal is also satisfied that the tanks are used directly in the treatment, reduction or removal of pollutants attributable to the manufacture of goods. The evidence is clear and uncontroverted that the system's sole function is to treat polluted water in the pulp and paper manufacturing process, so that it can be returned to the ocean virtually as clean as when it was first used. The apparatus made from the goods in issue are used directly and solely in that process.

A narrow interpretation of paragraph 1(o) of Part XIII of Schedule III to the Act might be that reference to the "goods described in paragraphs (a) to (n)," with respect to paragraph 1(b), is limited to only that machinery or apparatus which is "sold to or imported by manufacturers or producers." However, the Tribunal is of the view that the legislation should be read as a whole in order to appreciate its apparent intent. In approaching the matter in this way, the Tribunal can see no basis for an interpretation that would hold that the articles and materials referred to in paragraph 1(o) of Part XIII of Schedule III to the Act are to be considered tax-exempt, insofar as paragraph 1(b) is concerned, only when sold to or imported by a manufacturer or producer that would then produce machinery or apparatus out of those materials for subsequent sale to the appellant, and not when purchased as materials by the appellant for on-site construction. Indeed, the appellant had the apparent option to buy the machinery and apparatus in either an assembled or an unassembled state or to make the apparatus on site. For practical reasons, it was decided to erect huge reinforced concrete tanks on site; hence the purchase of the articles and materials that were used to make the tanks and the roof.

The Tribunal is of the view that a narrow interpretation would lead to the inapplicability of paragraph 1(o) of Part XIII of Schedule III to the Act when applied to paragraph 1(b), since nothing guarantees that, when the materials are used in the making of an apparatus, the apparatus will indeed be sold to or imported by a manufacturer or producer. Such an interpretation would not be in accordance with section 12 of the *Interpretation Act*,<sup>3</sup> which provides that every enactment is deemed remedial and, thus, shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. Consequently, the Tribunal considers that, in applying paragraph 1(o), the reference to apparatus "sold to or imported by manufacturers or producers" in paragraph 1(b) must be read so as to limit its application to the kind of apparatus that is indeed used by a manufacturer or producer, and not by anybody else, directly in the detection, measurement, prevention, treatment,

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2. Canadian International Trade Tribunal, Appeal No. AP-89-122, October 25, 1990.

3. R.S.C. 1985, c. I-21.

reduction or removal of pollutants to water, soil or air attributable to the manufacture or production of goods.

For all these reasons, the Tribunal finds that the ready-mix concrete and reinforcing steel in issue are materials within the meaning of paragraph 1(*o*) of Part XIII of Schedule III to the Act.

The Tribunal also finds that the prefabricated hollow core covers that form the roof of the UNOX reactor were specifically designed to cover the reactor and allow the introduction of oxygen into a pressurized system. In addition, the agitators in the UNOX reactor are suspended from the roof. Therefore, the prefabricated hollow core covers readily qualify as component parts of an apparatus for the treatment of pollutants and are, therefore, exempt from federal sales tax under the provisions of paragraph 1(*l*) of Part XIII of Schedule III to the Act as parts for goods described in paragraph 1(*b*).

Having found that the goods in issue qualify for exemption under the provisions of paragraphs 1(*l*) and 1(*o*) of Part XIII of Schedule III to the Act, there is no need to address the second issue in this appeal.

For the foregoing reasons, the appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Charles A. Gracey

Charles A. Gracey  
Member

Lise Bergeron

Lise Bergeron  
Member