CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, February 21, 1994

Appeal No. AP-92-351

IN THE MATTER OF an appeal heard on November 2, 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 December 8, 1992, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

KSI SANITEX LIMITED **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

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

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-92-351

KSI SANITEX LIMITED **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 81.19 of the Excise Tax Act of a determination of the Minister of National Revenue disallowing, in part, the appellant's application, under section 68.2 of the Excise Tax Act, for a refund of federal sales tax paid in respect of imported sanitary products that were subsequently sold under circumstances when, under subsection 50(5) of the Excise Tax Act, tax is not payable.

HELD: *The appeal is dismissed. The appellant is not entitled to a refund under section 68.2 of the Excise Tax Act, since the sales of the sanitary products in issue were not made under circumstances that would have rendered them exempt from federal sales tax under subsection 50(5) of the Excise Tax Act. The appellant was neither a licensed manufacturer nor a licensed wholesaler during the relevant period for this appeal and did not, therefore, satisfy the conditions of subsection 50(5) of the Excise Tax Act.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*November 2, 1993*
Date of Decision:	*February 21, 1994*
Tribunal Members:	*Arthur B. Trudeau, Presiding Member* *Charles A. Gracey, Member* *Lise Bergeron, Member*
Counsel for the Tribunal:	*Shelley Rowe*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*John A. Currie, for the appellant* *F.B. Woyiwada, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-92-351

KSI SANITEX 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*[1] (the Act) of a determination of the Minister of National Revenue (the Minister) disallowing, in part, the appellant's application for a refund of federal sales tax (FST) in the amount of $139,642.35 made under section 68.2 of the Act. The amount claimed in the application for refund represents the amount which the appellant paid as FST at the time that it imported certain sanitary products, namely, paper hand towels, toilet tissue and industrial paper wipers, but which it did not collect in respect of the sale of those products. Of the total amount of $139,642.35, only $17,773.42 was allowed. Of the balance, $11,226.28 was disallowed on the basis that it related to goods that were sold more than two years before the application for refund. The remaining amount, $110,642.65, was disallowed on the basis that it was not supported by evidence of the exemption claimed by the purchasers and is the subject of this appeal.

The issue in this appeal is whether the appellant is entitled to a refund of FST which it paid in respect of imported sanitary products subsequently sold to a licensed manufacturer known initially as CEK Mfg. Ltd. (CEK), but which later became Research Development Industries Limited (Research).[2]

Mr. John A. Currie, Vice-President, Finance, of KSI Sanitex Limited, appeared and testified on behalf of the appellant. He explained that the appellant is a wholesaler and distributor of imported paper products to the janitorial and sanitary industry and, during the relevant time covered by this appeal, was neither a licensed manufacturer nor a licensed wholesaler. The appellant's representative indicated that the appellant was at one time a licensed wholesaler, but that it "found it more beneficial to pay duty or taxes at the time of import into the country rather than against sales at a later time."

The appellant's representative provided evidence that all of the transactions giving rise to this appeal were sales of its products on a tax-exempt basis to either CEK or Research. Both companies were manufacturers of chemical cleaning products and wholesale distributors and carried on business under the trade names "Kem" and "Empire." According to the appellant's representative, Research declared bankruptcy in 1991 and no longer carries on business. He explained that, prior to entering into any business relationship with CEK, the appellant

1. R.S.C. 1985, c. E-15.
2. According to the evidence of the appellant's representative, Research was a licensed manufacturer under the name of "Research Development & Manufacturing Corporation," as indicated in the May 1988 "List of Licences under the Excise Tax Act."

toured CEK's facilities, met with CEK's management and formed the view that the sanitary products that it would provide to CEK would be incorporated into CEK's products.

The appellant's representative obtained from the receiver for Research, and submitted as evidence, a number of Research's sales invoices. These invoices confirmed, by reference to the appellant's product codes, that the goods sold by Research were originally acquired from the appellant and that Research charged FST on its sale price.

The appellant's representative also submitted as evidence a number of purchase orders from Research and the corresponding sales invoices. The following statement was stamped on the purchase orders: "Research Development Industries Limited Federal Sales Tax License S3616802," from which the appellant concluded that Research intended to use the sanitary products as partly manufactured goods. The sales invoices corresponding to the purchase orders indicated that the appellant had calculated the amount of FST and had deducted the amount from the sale price on the sales invoice.

It is indicated in the appellant's brief that it reviewed Research's exemption certificate which stated the following: "We certify that we are regarded for sales tax purposes as the manufacturer of the goods ordered hereby and that we will account for the sales tax on our taxable sales of the goods under our license." The appellant's representative, however, did not have specific knowledge of the certificate and did not produce it at the hearing.

As stated by the appellant's representative, CEK and Research sold the sanitary products under their own brand names, but in the same form as they were being supplied to them, as complementary products to the chemical products which they produced.

The appellant's representative argued two main points. First, he pointed out that the appellant had been led to believe that Research was entitled to purchase goods on a tax-exempt basis. In particular, the appellant relied on Research's use of its manufacturer's license number on its purchase orders, its tour of CEK's facilities and Research's exemption certificate. Second, the appellant's representative argued that the evidence was clear that there was double taxation in respect of the imported sanitary products that are the subject of this appeal.

Counsel for the respondent argued that, in order for the Tribunal to find that the appellant's sales were exempt from FST under paragraph 50(5)(*a*) of the Act, it must make the following findings of fact: (1) that the appellant was a licensed manufacturer; (2) that the appellant sold the sanitary products to a licensed manufacturer; and (3) that the sanitary products were partly manufactured goods.

Counsel for the respondent agreed that the appellant sold the sanitary products to a licensed manufacturer, but submitted that the other criteria were not met since the appellant was not a licensed manufacturer, and the sanitary products were not partly manufactured.

Counsel for the respondent submitted that, in order for goods to meet the definition of "partly manufactured goods" under section 42 of the Act, the goods must be intended for incorporation into other goods or for specified further processing prior to a subsequent sale subject to FST. Counsel relied on the Tribunal's decision in *Printing Unlimited (1985) Ltd. v. The Minister of National Revenue*[3] to support the position that the appellant had the responsibility to verify whether the goods purchased were subject to a tax-exempt use. In counsel's view, the appellant had not obtained nor produced evidence that the sanitary products were to be used in a way that would qualify them as partly manufactured goods and had, therefore, not established that the sales were exempt from FST.

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3. Appeal No. AP-90-188, January 20, 1992.

In the Tribunal's view, the Minister correctly determined that the appellant was not entitled to a refund of the FST that it paid in respect of the imported sanitary products which it subsequently sold on a tax-exempt basis.

In order for the appellant to be entitled to a refund under section 68.2 of the Act, the sales of the sanitary products to CEK or Research must have been made under circumstances that, by virtue of the nature of CEK or Research or the use to which CEK or Research would put the sanitary products, would have rendered the sales exempt from FST under subsection 50(5) of the Act.

Subsection 50(5) of the Act sets out a number of circumstances under which FST shall not be payable in respect of goods. The appellant has specifically relied on paragraph 50(5)(*a*) of the Act which refers to goods "sold by a licensed manufacturer to another licensed manufacturer if the goods are partly manufactured goods." The Tribunal has also reviewed the other exempting circumstances listed under subsection 50(5) of the Act. It is clear that all of the circumstances that might possibly apply to the facts of this appeal require either a sale or an importation by either a licensed manufacturer or a licensed wholesaler. The admission by the appellant's representative that the appellant was neither a licensed manufacturer nor a licensed wholesaler during the relevant period for this appeal is, therefore, fatal to its claim for a refund of FST in relation to sales made under circumstances when FST is not payable, as provided for under subsection 50(5) of the Act.

A manufacturer or wholesaler licensed under the Act is permitted to purchase or import goods on a tax-exempt basis. Since the appellant was neither a licensed manufacturer nor a licensed wholesaler, it was required to pay FST in respect of the imported sanitary products in issue. The appellant did not, therefore, pay FST in error. If the appellant had wanted to import the sanitary products in issue on a tax-exempt basis, it would have been necessary for the appellant to become either a licensed manufacturer or a licensed wholesaler.

The issue of whether the sanitary products constitute partly manufactured goods need not be addressed since the appeal must be dismissed on the grounds that the appellant was, at the relevant time, neither a licensed manufacturer nor a licensed wholesaler and did not, therefore, fall within any of the circumstances under which FST is not payable, as provided for under subsection 50(5) of the Act.

Accordingly, the appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Lise Bergeron
Lise Bergeron
Member