

Ottawa, Wednesday, June 8, 1994

Appeal No. AP-93-143

IN THE MATTER OF an appeal heard on January 25, 1994,
under section 81.19 of the *Excise Tax Act*, R.S.C. 1985,
c. E-15;

AND IN THE MATTER OF decisions of the Minister of
National Revenue dated May 28, 1993, with respect to notices
of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

COMPAGNIE DE FLOTTAGE DU ST-MAURICE LIMITÉE

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

Michèle Blouin

Michèle Blouin
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Desmond Hallissey

Desmond Hallissey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-143

COMPAGNIE DE FLOTTAGE DU ST-MAURICE LIMITÉE **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The appellant operates a business of floating logs down the Saint-Maurice river in the province of Quebec. The logs, cut at various locations along the river, are carried to pulp and paper mills using booms, tugboats, barges, lighters and other vessels. There are two issues in this appeal. The first is whether the booms or parts thereof are goods which the appellant appropriated for its own use within the meaning of section 52 of the Excise Tax Act, and the second is whether the tugboats are used pursuant to the exemption provision set forth in section 11 of Part XVII of Schedule III to the Excise Tax Act and its regulations.

HELD: *The appeal is allowed in part. The Tribunal finds that neither the booms nor the parts thereof are goods and, consequently, that one of the conditions of section 52 of the Excise Tax Act, that is, that the appellant appropriates goods for its own use, was not met. Moreover, the evidence reveals that the tugboats are used exclusively in towing operations pursuant to the exemption provision set forth in the Excise Tax Act and its regulations.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: January 25, 1994
Date of Decision: June 8, 1994*

*Tribunal Members: Michèle Blouin, Presiding Member
Arthur B. Trudeau, Member
Desmond Hallissey, Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Anne Jamieson

*Appearances: Pierre Pelletier, for the appellant
Christine Hudon, for the respondent*

Appeal No. AP-93-143

COMPAGNIE DE FLOTTAGE DU ST-MAURICE LIMITÉE **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
 ARTHUR B. TRUDEAU, Member
 DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of two assessments confirmed in part by the Minister of National Revenue.

The appellant operates a business of floating logs down the Saint-Maurice river in the province of Quebec. The logs, cut at various locations along the river, are carried to pulp and paper mills using booms, tugboats, barges, lighters and other vessels. The booms are structures varying in length from a few hundred metres to several kilometres. Essentially, a boom is a linked barrier formed of several logs held together by chains.

The two assessments determined an amount owing as unremitted federal sales tax (FST) on the manufacture of booms for the appellant's own use and as unpaid FST on the purchase of materials used to install the booms and on the purchase of materials used to maintain, repair and improve the tugboats used by the appellant. The respondent's two decisions indicate that, within the meaning of section 52 of the Act, the booms are considered to be goods which the appellant manufactures and appropriates for its own use and that the use of the tugboats does not meet the exemption provision set forth in section 11 of Part XVII of Schedule III to the Act. The Tribunal notes that the appellant indicated that it was no longer contesting that part of the assessments relating to unpaid FST on the purchase of materials used to install the booms.

As a result, there are two issues in this appeal. First, the Tribunal must determine whether the booms or parts thereof are goods which the appellant appropriated for its own use within the meaning of section 52 of the Act. Second, the Tribunal must decide whether the tugboats are used exclusively for marine activities which the Governor in Council may prescribe, and indeed has done so, in the *Ships and Other Marine Vessels Exemption Regulations*² (the Regulations).

After having analysed the evidence and considered the arguments of the parties, the Tribunal finds that the appellant has discharged its burden of proof that the assessments are incorrect.

1. R.S.C. 1985, c. E-15.
2. C.R.C. 1978, c. 597.

During the hearing, the Tribunal heard the testimony of Mr. Luc Lafond, a forestry engineer and Director of Compagnie de Flottage du St-Maurice Limitée. From his testimony, the Tribunal learned that there are three types of booms: (1) holding booms used to build up a volume of logs on the river at the entrance to dams; (2) directional booms used to divide the river in order to preserve part of it for recreational use; and (3) mobile booms that are towed by boats when wind conditions are not favourable. Furthermore, all of the booms, with the exception of the mobile booms, are fixed permanently to solid ground. It is important to point out that the mobile booms are not covered by the assessments because none was built during the period at issue. The booms are attached to anchors with very strong chains or to wooden or steel pillars which are themselves anchored to the river bed. Some of the pillars transferred to the appellant in 1917 are still used today. The directional booms are also fixed to solid ground by chains. The booms are built on site on the river bank. They are made of timber from British Columbia (Douglas fir) or from Quebec (spruce) and steel rods, chains and connections. Two or three logs, normally measuring 40 ft. in length and 14 in. in diameter, are first linked together using steel rods. Holes are then drilled in the ends of the logs in order to insert the chains and connect various combinations of wood pieces known as boom strings. Each boom string lasts about 40 years. Once the booms are assembled, they are towed to the desired location.

As for the tugboats, Mr. Lafond indicated that they are used to tow mobile and other booms built on the river bank. They are also used to open and close the gates of the holding booms, operations which allow the required quantity of logs down the river. Finally, the tugboats are also used to tow the barges used to collect sunken or beached logs.

Having said this, the Tribunal notes that the two assessments determined an amount for FST owing with respect to the [translation] "manufacture of booms." However, the evidence shows that booms are not goods. They are structures permanently anchored to the ground and to the river bed with chains and pillars. They are, therefore, immovable property. Further, the repair of booms by constructing new parts does not represent the production or manufacture of goods within the Act. Mr. Lafond's uncontested testimony revealed that the boom strings are not sold on the market and that all companies engaged in the floating of logs operate in the same manner. According to Le Nouveau Petit Robert 1,³ goods (*une marchandise*) are a "[c]hose mobilière pouvant faire l'objet d'un commerce, d'un marché" (movable object that can be traded or for which there is a contract). Consequently, one of the conditions of section 52 of the Act, that is, that the appellant appropriate goods for its own use, has not been met with respect to either the manufacture or the repair of booms. The case *Her Majesty the Queen v. York Marble, Tile and Terrazzo Limited*,⁴ which was cited by counsel for the respondent in support of her arguments that the appellant's activities constitute the production or manufacture of goods, does not apply in this instance. This also holds true for *Dominion Bridge Co. Limited v. the King*,⁵ in which it was found that the steel structures of two bridges were the object of a sale before they were erected. In that case, the steel structures could have been, and indeed were, the object of trade according to the findings of the Exchequer Court of Canada, which is not the case in this instance for the reasons given above.

As for the materials purchased for the maintenance or repair of the tugboats, the appellant claimed that they are exempt from FST because the tugboats are used solely for the

3. (Montréal: DicoRobert, 1993) at 1352.

4. [1968] S.C.R. 140.

5. (1939), 1 D.T.C. 499-12.

transport of freight by water for commercial purposes, as well as for towing operations as specified in Part XVII of Schedule III to the Act and in the Regulations. For her part, counsel for the respondent claimed that the tugboats are used primarily for the transport of booms, the opening and closing of the gates of the holding booms, the cleaning of the river and the transportation of personnel. She added that, while the transport of the booms represents a prescribed marine activity, the tugboats are not used "exclusively" for the marine activities prescribed by the Regulations, as required under section 11 of Part XVII of Schedule III to the Act.

Here again, the Tribunal finds that the appellant successfully showed that the assessment is incorrect. The uncontradicted testimony of Mr. Lafond is that the tugboats are used to tow mobile booms, barges and parts of booms once they are built. The Tribunal finds that the opening and closing of the gates of the holding booms also constitutes a towing activity within the meaning of the Regulations since, as Mr. Lafond stated, these operations require the driving force of the tugboats.

Therefore, the appeal is allowed in part, given that the appellant is no longer contesting that part of the assessments relating to unpaid FST on the purchase of materials used to install the booms.

Michèle Blouin
Michèle Blouin
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member