CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, January 4, 1995

Appeal No. AP-93-148

IN THE MATTER OF an appeal heard on September 20, 1994, 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 June 2, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

PRICE & MARKLE EQUIPMENT LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed. The matter is referred back to the Minister of National Revenue for determination, in a manner consistent with these reasons, of the federal sales tax payable based on the actual amounts for which the appellant purchased goods and, having made that determination, for further determination of whether the appellant is entitled to a refund of federal sales tax paid pursuant to section 68 of the *Excise Tax Act*.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

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

Lyle M. Russell
Lyle M. Russell

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

Member

Michel P. Granger
Michel P. Granger
Secretary

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-93-148

PRICE & MARKLE EQUIPMENT LTD. **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 that rejected, in part, the appellant's application for a refund, under section 68 of the Excise Tax Act, of federal sales tax that it claims was paid in error. The issue in this appeal is whether the Minister of National Revenue correctly determined that the appellant was not entitled to the refund claimed on the basis that it did not "identify the cost of domestic goods or the duty paid value of each item sold under taxable conditions pursuant to Memorandum ET 201."

HELD: *The appeal is allowed. There is no requirement under subparagraph 50(1)(c)(ii) or in the definition of "sale price" under section 42 of the Excise Tax Act that a licensed wholesaler must provide copies of sales invoices and/or customs documentation to support the calculation of its federal sales tax liability. The Tribunal is of the view that the information provided by the appellant satisfies the requirements of the Excise Tax Act, since it includes the amounts for which the appellant purchased goods, for duties and for any additional costs, such as brokerage fees. The matter is referred back to the Minister of National Revenue for determination, in a manner consistent with these reasons, of the federal sales tax payable based on the actual amounts for which the appellant purchased goods and, having made that determination, for further determination of whether the appellant is entitled to a refund of federal sales tax paid pursuant to section 68 of the Excise Tax Act.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*September 20, 1994*
Date of Decision:	*January 4, 1995*
Tribunal Members:	*Arthur B. Trudeau, Presiding Member* *Robert C. Coates, Q.C., Member* *Lyle M. Russell, Member*
Counsel for the Tribunal:	*Shelley Rowe*
Clerk of the Tribunal:	*Anne Jamieson*

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

Parties:	*Kenneth J. Bowden, for the appellant* *Michael Ciavaglia, for the respondent*

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-93-148

PRICE & MARKLE EQUIPMENT LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
ROBERT C. COATES, Q.C., Member
LYLE M. RUSSELL, 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) dated July 26, 1991, that rejected, in part, the appellant's application for a refund, under section 68 of the Act, of federal sales tax (FST) that it claims was paid in error. The issue in this appeal is whether the Minister correctly determined that the appellant was not entitled to the refund claimed on the basis that it did not "identify the cost of domestic goods or the duty paid value of each item sold under taxable conditions pursuant to Memorandum ET 201."

The appeal proceeded by way of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*[2] and on the basis of the Tribunal's record, which includes the parties' agreed statement of facts filed on August 11, 1994, and the parties' briefs.

The agreed statement of facts provides that the appellant was, at all material times, a licensed wholesaler of industrial tools and supplies to commercial users such as loggers, miners, machine shops and farmers. On May 16, 1991, the appellant filed an application for a refund of FST in the amount of $33,878.00 paid during the period from May 17, 1989, to December 31, 1990. On July 26, 1991, the Minister issued a notice of determination that rejected the application for refund. As a result of discussions between the appellant's representative and the respondent, the appellant refiled its refund application on August 13, 1991. On October 18, 1991, the respondent issued another notice of determination that allowed part of the refund in the amount of $20,821.70. The appellant served a notice of objection on the respondent with respect to the amount of $13,056.30 that had been disallowed. On June 2, 1993, by notice of decision, the respondent confirmed the determination which is being appealed to the Tribunal.

In the information on file, the appellant indicates that, for several years prior to the repeal of the

1. R.S.C. 1985, c. E-15.
2. SOR/91-499, August 14, 1991, Canada Gazette Part II, Vol. 125, No. 18 at 2912.

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

FST in 1990, the appellant availed itself of the alternative FST accounting method known as the "blanket discount" method, as outlined in Excise Memorandum ET 201[3] (Memorandum ET 201). A licensed wholesaler using the blanket discount method calculates its average markup from cost to sale price using a two-year average of financial results. During the period prior to the repeal of the FST, the appellant's sales margins increased such that it was no longer advantageous for it to calculate its FST liability using a blanket discount. Therefore, the appellant discontinued using the blanket discount method and calculated its FST liability based on actual aggregate sales figures as determined from its books and records, which had been audited by an independent public accounting firm.

In the appellant's brief, it is argued that there is no requirement, either written or implied, under paragraph 50(1)(*c*) of the Act to suggest that FST payable by licensed wholesalers must be calculated on each and every invoice separately and that, absent such a requirement, there is no authority for imposing "invoice by invoice" accounting. It is sufficient, in the appellant's view, that every item purchased be recorded in the accounting system.

It is also submitted in the appellant's brief that its method of accounting is supported by generally accepted accounting principles and has previously been accepted by the respondent without question.

The appellant requests that the Tribunal refer the matter back to the respondent for reconsideration based on the following: (1) paragraph 50(1)(*c*) of the Act does not require accounting on an "invoice by invoice" basis; (2) its accounting system reflects generally accepted accounting principles; (3) the respondent has not previously questioned the accuracy of the appellant's accounting system; and (4) the calculation of rebates, allowances and profit margins and prorating techniques apply equally when calculating FST payable under the Act as they do when calculating FST payable using the blanket discount method under Memorandum ET 201.

In the respondent's brief, it is submitted that there is no provision in the Act or Memorandum ET 201 that authorizes combining or modifying methods used to compute FST liability. The respondent states that, under paragraph 50(1)(*c*) of the Act, the appellant is liable to pay FST on the duty-paid value of the goods if they are imported or on the actual purchase price that it paid. In the respondent's view, in order to determine its FST liability pursuant to paragraph 50(1)(*c*) of the Act, the appellant must record the price that it paid for each and every item that it purchased. Alternatively, the appellant may calculate its FST liability using the blanket discount method set out in Memorandum ET 201, which method involves the preparation of a reconstructed trading statement covering the licensed wholesaler's business for the two preceding fiscal years.

Pursuant to subparagraph 50(1)(*c*)(ii) of the Act, the appellant, as a licensed wholesaler, is

---

3. Licensed Wholesalers, Department of National Revenue, Customs and Excise, September 29, 1989.

required to pay FST on the duty-paid value of imported goods or on the sale price of goods that are not imported, to be computed based on the price for which it purchased the goods, in other words, the vendor's sale price to the appellant.

Section 42 of the Act defines "sale price" for the purposes of determining the FST payable on goods, other than wines, as follows:

> *(i) the amount charged as price before any ... other tax under the Act is added thereto,*
> *(ii) any amount that the purchaser is liable to pay to the vendor by reason of or in respect of the sale in addition to the amount charged as price ... including, without limiting the generality of the foregoing, any amount charged for, or to make provision for, advertising, financing, servicing, warranty, commission or any other matter, and*
> *(iii) the amount of the excise duties payable under the Excise Act whether the goods are sold in bond or not,*
>
> *and, in the case of imported goods, the sale price shall be deemed to be the duty paid value thereof.*

Based on these provisions, the Tribunal concludes that, for goods which are not imported, a licensed wholesaler is liable to pay FST on the purchase price for the goods, which price includes the amount charged as price before any taxes under the Act are paid, any amounts charged in addition to that price for matters such as advertising, servicing, etc. and any amounts for excise duties.

There is no requirement under subparagraph 50(1)(*c*)(ii) of the Act or in the definition of "sale price" under section 42 of the Act that a licensed wholesaler must provide copies of sales invoices and/or customs documentation to support the calculation of its FST liability. In the Tribunal's view, had it been the intention of Parliament to require licensed wholesalers to provide such information, Parliament would have explicitly provided for such a requirement in either the Act or regulations, as it did with respect to the determination of exclusions from the sale price, under section 46 of the Act, of erection or installation and transportation costs.[4]

In the Tribunal's view, the information provided by the appellant satisfies the requirements of the Act for determining a licensed wholesaler's FST liability, since it includes the amounts for which the appellant purchased goods, for duties and for any additional costs, such as brokerage fees.

The Tribunal observes that, although there is no explicit requirement under paragraph 50(1)(*c*) of the Act that a licensed wholesaler provide copies of sales invoices or customs documentation for the purposes of determining its FST liability, a person claiming a refund of FST under section 68 of the Act is required to keep such information and to make it available to officers of the Department of National Revenue (Revenue Canada). Subsection 98(1) of the Act requires that every person who makes an application for a refund under section 68 of the Act shall keep records and books "in such form and containing such information as will enable the amount of taxes or other sums that should have been paid or collected ... to be determined." Subsection 98(3) of the Act provides that the books of account and every account and voucher necessary to verify the information therein are to be made available for inspection by officers of Revenue Canada at all reasonable times. Thus, the appellant is required to have the relevant invoices and customs documentation and to make them available to Revenue Canada for verification of its refund claim. However, there is no requirement that the appellant include the invoices and customs documentation with its application.

---

4. Section 3 of the *Sales Tax Transportation Allowance Regulations* provides that for the purpose of determining the consumption or sales tax payable on the sale price of goods manufactured or produced in Canada, the amount representing the cost of transportation of the goods that may be excluded shall be determined by reference to invoices, statements, records or books of account.

Section 8 of the *Erection or Installation Costs Regulations* provides that a manufacturer or producer shall support all costs of installation determined under section 5 and all calculations described in section 7 by documentary evidence. Alternatively, section 10 provides that a manufacturer or producer is not required to support the percentage deductions described in section 6 by actual cost records. Pursuant to section 6, the cost of erection or installation is calculated by applying a determined value to the sale price for the goods, including erection or installation.

Accordingly, the appeal is allowed. The matter is referred back to the Minister for determination, in a manner consistent with these reasons, of the FST payable based on the actual amounts for which the appellant purchased goods and, having made that determination, for further determination of whether the appellant is entitled to a refund of FST paid pursuant to section 68 of the Act.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

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

Lyle M. Russell
Lyle M. Russell
Member