

Ottawa, Thursday, July 21, 1994

**Appeal No. AP-93-250**

IN THE MATTER OF an appeal heard on February 16, 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 September 10, 1993, with respect to a  
notice of objection served under section 81.15 of the *Excise  
Tax Act*.

**BETWEEN**

**KRAMER LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed in part.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

W. Roy Hines

W. Roy Hines  
Member

Charles A. Gracey

Charles A. Gracey  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-250**

**KRAMER 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 January 27, 1993, for unpaid federal sales tax during the period from September 30, 1988, to December 31, 1990. Counsel for the respondent conceded that the appellant was incorrectly assessed for federal sales tax on inventory adjustments and sales which occurred prior to January 27, 1989. The remaining issue to be considered in this appeal is whether sales of certain Caterpillar diesel engines, model Nos. 3306 and 3208, made between January 27, 1989, and December 31, 1990, are exempt from federal sales tax as either "[t]raction engines for farm purposes" or "[a]gricultural machinery and parts therefor" under Part IV of Schedule III to the Excise Tax Act, or as "[p]arts and equipment installed on" highway trucks under Part XVII of Schedule III to the Excise Tax Act.*

**HELD:** *The appeal is allowed in part. The Tribunal allows the appeal in respect of the sales of the diesel engines for which the appellant claimed the benefit of the exemption for "[t]raction engines for farm purposes" under Part IV of Schedule III to the Excise Tax Act. The evidence shows that the appellant sold those engines to dealers which specialize in farm implements and which service the farming community, with the knowledge that the engines would be resold to farmers for use in farm implements, such as tractors. However, the appeal is dismissed in respect of the sales of the diesel engines for which the appellant claimed the benefit of the exemption for "[p]arts and equipment installed on" highway trucks under Part XVII of Schedule III to the Excise Tax Act, since those engines were not "installed" at the time of their sale.*

*The Tribunal refers the matter back to the Minister of National Revenue to adjust the amount of the assessment so that it does not include any amounts relating to the period prior to January 27, 1989, or to adjust the amount for federal sales tax in respect of the sales of the diesel engines identified by the appellant's representative on the assessment summary as having been sold for farm purposes.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: February 16, 1994  
Date of Decision: July 21, 1994*

*Tribunal Members: Arthur B. Trudeau, Presiding Member  
W. Roy Hines, Member  
Charles A. Gracey, Member*

*Counsel for the Tribunal: Shelley Rowe*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Robert J. Perry, for the appellant  
Anne M. Turley, for the respondent*

**Appeal No. AP-93-250**

**KRAMER LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member  
W. ROY HINES, Member  
CHARLES A. GRACEY, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of an assessment of the Minister of National Revenue dated January 27, 1993, for unpaid federal sales tax (FST) during the period from September 30, 1988, to December 31, 1990.

At the hearing, counsel for the respondent conceded that, under subsection 81.11(2) of the Act which provides that no assessment shall be made more than four years after the tax is payable, the appellant was incorrectly assessed for FST on inventory adjustments and sales which occurred prior to January 27, 1989.

The remaining issue to be considered in this appeal is whether the appellant was correctly assessed for FST in respect of sales of certain Caterpillar diesel engines, model Nos. 3306 and 3208 (the diesel engines in issue), made between January 27, 1989, and December 31, 1990.

The appellant's representative, Mr. Robert J. Perry, Finance Manager for Kramer Ltd., submitted that certain of the appellant's sales of the diesel engines in issue, made during the period of assessment, were exempt from FST, since they qualified as either "[t]raction engines for farm purposes" or "[a]gricultural machinery and parts therefor" under Part IV of Schedule III to the Act, or as "[p]arts and equipment installed on" highway trucks under Part XVII of Schedule III to the Act.

The appellant's representative testified that, during the period of assessment, the appellant was a licensed wholesaler and imported the diesel engines in issue and parts and sold them to the construction, mining, forestry and agriculture industries and government markets in Saskatchewan. He stated that the appellant sells directly to every industry, except to the agriculture and transportation industries, although the appellant has, in some instances, sold directly to those industries.

In support of his contention that certain of the diesel engines in issue were sold for farm purposes or that they are parts for agricultural machinery, the appellant's representative stated that certain of the diesel engines in issue were sold to farm implement dealers that do business only in farm implements and that service only the local farm market. He provided the Tribunal

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

with a copy of a summary of the assessment prepared by the Department of National Revenue (Revenue Canada). He stated that he had reviewed the summary and marked "Ag" beside each of the sales that was made to farm implement dealers, sales of engines which, in his view, were for farm purposes. He specifically referred to a number of the purchasers of the diesel engines in issue, that, he stated, deal only in farm implements.

The appellant's representative submitted that, since the appellant was aware of the use to which the diesel engines in issue would be put, it did not charge FST on the sales of the engines. Further, he submitted that there is no requirement under the Act that a person claiming the exemption obtain a certificate as to end use. The appellant, therefore, did not obtain any certificates.

The appellant's representative stated that the diesel engines in issue could be used for applications other than agricultural. However, he stated that an engine must be configured for use for a particular application. For instance, for an agricultural application, the engine might be configured to run at a higher rate of revolutions per minute (rpm) than would an engine for a construction application. He explained that an engine could be configured by either the manufacturer or the appellant and that a particular configuration may be suitable for more than one application.

Mr. Darrin Murch, a desk clerk with Bells Corners Automotive Machine Shop Ltd. (Bells Corners Automotive), appeared as a witness for the respondent. Bells Corners Automotive is in the business of rebuilding engines, including Caterpillar engines. Mr. Murch is trained in engine analysis and performs such analyses as part of his duties at Bells Corners Automotive.

Mr. Murch discussed the characteristics and uses of the diesel engines in issue. He stated that model No. 3306 is an in-line, 6-cylinder engine and is used for marine and industrial applications, such as in large generators, air compressors and the like, or in large equipment, such as in graders and trucks. Model No. 3208 is an 8-cylinder engine and is used in trucks for industrial and agricultural applications.

According to Mr. Murch, although all engines are composed of parts such as the cylinder head, bore, block and crankshaft, they may have different trim parts, such as injection systems, manifolds and motor mounts, and different horsepower ratings and rpm settings, depending upon the application of the engine. However, these trim parts and settings are external and not integral to the engine. An engine is considered to be configured differently from another engine depending upon the trim parts and settings of that engine.

Counsel for the respondent submitted that parts for farm tractors are exempt from FST if purchased by bona fide farmers and other producers as parts for tractors used only for farm purposes. She argued that the diesel engines in issue do not qualify for the exemption, since the appellant sells them to farm implement dealers, and they are not used only on agricultural machinery.

Counsel for the respondent referred to the Tribunal's decision in *Union Tractor Ltd. v. The Minister of National Revenue*,<sup>2</sup> wherein it was found that certain engines were not exempt from FST under Part XVI of Schedule III to the Act as "construction equipment," since they were not designed specifically for construction equipment. The words "designed for" appear in section 1

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2. Appeal No. AP-92-213, September 8, 1993.

of Part XVI of Schedule III which deals with "Construction Equipment." In *Union Tractor*, the Tribunal determined that the equipment in issue had a multiplicity of uses and that there was insufficient evidence to show that the equipment was designed for "construction equipment."

The appellant's representative further claimed that certain of the diesel engines in issue were sold for transportation applications and were, therefore, exempt from FST under Part XVII of Schedule III to the Act which deals with "Transportation Equipment." The representative relied on the following section of Part XVII of Schedule III:

*10. Parts and equipment installed on the tax exempt goods mentioned in sections 1, 2, 4, 5, 6, 7 and 9 of this Part or designed for permanent installation on the tax exempt goods mentioned in section 3 of this Part where the sale price by the Canadian manufacturer or the duty paid value of the imported article exceeds two thousand dollars per unit; all parts and equipment installed on the tax exempt goods mentioned in sections 1, 2, 3, 4, 5, 6, 7 and 9 of this Part prior to the first use of those tax exempt goods; except that parts and equipment installed on the tax exempt goods mentioned in section 1 of this Part are exempted from tax only if they are designed to facilitate the carriage or handling of freight.*

The appellant's representative provided the Tribunal with copies of three letters from end users of certain of the diesel engines in issue sold by the appellant which confirm that the engines were installed on their trucks by Freightliner Truck Sales Regina Ltd. According to the representative, the appellant was advised by an audit supervisor in Regina, Saskatchewan, that all that it required in order to claim the exemption under section 10 of Part XVII of Schedule III to the Act were certificates confirming that the engines were installed on qualifying trucks. He did not dispute that the diesel engines in issue were not installed by the appellant.

Counsel for the respondent submitted that the diesel engines in issue do not qualify for the exemption under section 10 of Part XVII of Schedule III to the Act, since they were not installed by the appellant on qualifying transportation equipment as of the date of sale.

The Tribunal observes that, under section 51 of the Act, "[t]he tax imposed by section 50 does not apply to the sale or importation of the goods mentioned in Schedule III." The appellant's representative claimed that the sales of the diesel engines in issue were not subject to FST, since (1) certain of the diesel engines in issue were exempt from FST under Part IV of Schedule III to the Act as either "[t]raction engines for farm purposes" or "[a]gricultural machinery and parts therefor," and (2) certain of the diesel engines in issue were exempt from FST under Part XVII of Schedule III as "[p]arts and equipment installed on the tax exempt goods mentioned in sections 1, 2, 4, 5, 6, 7 and 9" of that part.

The appellant's representative relied on the following sections of Part IV of Schedule III to the Act to support the claim that certain of the diesel engines in issue were exempt as either "[t]raction engines for farm purposes" or "[a]gricultural machinery and parts therefor:"

*25. Traction engines for farm purposes and accessories therefor, not including machines and tools for operation by those engines, and complete parts of the foregoing, and materials to be used exclusively in the manufacture thereof.*

*29. Agricultural machinery and parts therefor.*

In the Tribunal's view, the diesel engines in issue qualify as "[t]raction engines for farm purposes" under section 25 of Part IV of Schedule III to the Act. In considering the applicability of section 25, the Tribunal examined the plain and ordinary meaning of the word "traction," which is "the act or process of pulling a load or vehicle over a surface<sup>3</sup>" or "the action of drawing a body, vehicle, train, or the like, along a surface, as a road, track, railroad, or waterway."<sup>4</sup> According to the evidence of both the appellant's representative and the respondent's witness, the diesel engines in issue are used for the purpose of pulling a load or vehicle over surfaces such as roads, land or waterways. In the Tribunal's view, the diesel engines in issue, therefore, qualify as traction engines.

Having found that the diesel engines in issue were traction engines, the Tribunal considered whether those engines were "for farm purposes." The appellant's representative testified that the diesel engines in issue were sold to farm implement dealers for resale to farmers for use in farm implements, such as tractors. In the Tribunal's view, the diesel engines in issue, which were sold to dealers specializing in farm implements and servicing only the farming community, with the appellant's knowledge that those engines would be resold to farmers for use in farm implements, were for farm purposes.

A comparison of the language used in section 25 of Part IV of Schedule III to the Act with the language used in other sections and parts of Schedule III supports the Tribunal's interpretation of the words "for farm purposes" in section 25. For instance, section 1 of Part XII of Schedule III exempts "goods sold to or imported by municipalities for their own use and not for resale." Section 1 of Part XVII of Schedule III exempts "highway trucks designed primarily for the carriage of freight." Had Parliament intended that there be a requirement that the traction engines be sold directly to farmers and be designed only for farm purposes in order to qualify for the exemption under section 25, as argued by counsel for the respondent, it could have included a phrase such as "sold to farmers for their own use and not for resale" and "designed primarily" or "designed only" for farm purposes. However, Parliament chose to use the words "for farm purposes."

The appellant's representative also claimed that certain of the diesel engines in issue were exempt from FST under Part XVII of Schedule III to the Act as "[p]arts and equipment installed on the tax exempt goods mentioned in sections 1, 2, 4, 5, 6, 7 and 9" of that part. The word "installed" indicates, in the Tribunal's view, that the act of installation must have occurred at the time when the incidence of tax occurred, that is, at the time of the sales of the diesel engines in issue. There is no indication from the language of the exemption that it includes parts and equipment which are intended to be installed on tax-exempt goods at some time in the future.

The appellant's representative provided the Tribunal with certificates confirming that three of the diesel engines in issue were, in fact, installed on freight trucks. However, it is undisputed that these diesel engines were not installed on the freight trucks at the time of their sale.

Accordingly, the appeal is allowed in part. The Tribunal refers the matter back to the Minister of National Revenue to adjust the amount of the assessment so that it does not include

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3. Gage Canadian Dictionary (Toronto: Gage Publishing, 1983) at 1190.

4. The Random House Dictionary of the English Language, 2nd ed. (Toronto: Random House, 1987) at 2005.

any amounts relating to the period prior to January 27, 1989, or to adjust the amount for FST in respect of the sales of the diesel engines identified by the appellant's representative on the assessment summary as having been sold for farm purposes.

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