CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, August 3, 1995

Appeal No. AP-94-153

IN THE MATTER OF an appeal heard on March 2, 1995, 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 9, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

POLI-TWINE CANADA
A DIVISION OF TECSYN INTERNATIONAL INC. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed. The Tribunal refers the matter back to the respondent for reconsideration of the appellant's application for refund.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

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

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-94-153

POLI-TWINE CANADA
A DIVISION OF TECSYN INTERNATIONAL INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The issue in this appeal is whether certain twines are exempt from the imposition of federal sales tax. If so, any taxes paid in respect of their sale were paid in error.

HELD: *The appeal is allowed. With respect to the reconciliation of the English and French versions of section 2 of Part XI of Schedule III to the Excise Tax Act, the Tribunal believes that the whole meaning of the exemption is best reflected in the English version. With regard to the proposition that a farm use requirement should be read into section 2 of Part XI, the Tribunal is loath to read into the Excise Tax Act a qualification that does not expressly exist. Furthermore, the legislative history of the exemption makes clear that Parliament had no intention of limiting the exemption to baler twine used in farm applications. Based on the evidence and its understanding of the grammatical and ordinary meaning of "baler twine," the Tribunal believes that the goods in issue can be considered baler twine. As the exemption of section 2 of Part XI applies to baler twine, without further qualification as to end use, the Tribunal believes that the goods in issue qualify for exemption from federal sales tax pursuant to this provision.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*March 2, 1995*
Date of Decision:	*August 3, 1995*
Tribunal Members:	*Lyle M. Russell, Presiding Member* *Arthur B. Trudeau, Member* *Robert C. Coates, Q.C., Member*
Counsel for the Tribunal:	*David M. Attwater*
Clerk of the Tribunal:	*Anne Jamieson*
Appearances:	*Michael Kaylor, for the appellant* *Susan G. Tataryn, for the respondent*

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TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-94-153

POLI-TWINE CANADA
A DIVISION OF TECSYN INTERNATIONAL INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: LYLE M. RUSSELL, Presiding Member
ARTHUR B. TRUDEAU, Member
ROBERT C. COATES, Q.C., 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 that rejected an application for refund of federal sales tax (FST) believed to have been paid in error.

The refund application was received by the respondent on April 21, 1992, and was for $353,254.68 in respect of twines, not otherwise defined, which are alleged to be exempt from tax pursuant to section 2 of Part XI of Schedule III to the Act (hereinafter referred to as section 2 of Part XI). In the appellant's brief, however, the twines are described as "various tying and wrapping twines such as cotton twine, sisal twine, paper twine, jute twine, poly twine, twine for parcels and cotton/poly twine." In rejecting the application, the respondent explained that the twines "do not qualify as unconditionally exempt baler twine." Furthermore, the twines "have not been marketed as baler twine of a specific dimension for the baling machines but as commercial 'tying twines'." In confirming the determination by notice of decision, the respondent indicated that the French version of section 2 of Part XI supports the conclusion that "the exemption provided for 'baler twine' is one of a specific nature and does not contemplate tying or wrapping material in general." As the twines were not considered "baler twines," they were found not to be covered by the exemption.

The issue in this appeal is whether certain twines are exempt from the imposition of FST. If so, any taxes paid in respect of their sale were paid in error.

For purposes of this appeal, the relevant provisions of the Act state:

> *51.(1) The tax imposed by section 50 does not apply to the sale ... of the goods mentioned in Schedule III.*

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

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SCHEDULE III

PART XI

MISCELLANEOUS

2. Baler twine and materials for use exclusively in the manufacture thereof.	*2. Ficelle d'emballage et matières servant exclusivement à sa fabrication.*

The appellant's witness was Mr. Randy Pascoe, Plant Manager for Poli-Twine Canada. Mr. Pascoe identified Exhibit A-1 as containing eight samples of twines of various grades described as polypropylene tying twines. He confirmed that, contrary to any earlier claims, Poli-Twine Canada's appeal was limited to these twines.

The twines in issue are composed of different numbers of individual polypropylene filaments bound by a blue wrap around the outside to maintain a particular size. The eight grades are called M90, M140, M180, M210, M240, M275, M500 and M800, the number corresponding to the tensile strength of the twine. The twines are sold in a standard 10-lb. package, which includes the packaging. As the weaker twines contain fewer filaments, are lighter per given length and are smaller in diameter, a 10-lb. package of the weaker twines contains a greater length of twine.[2]

Mr. Pascoe told the Tribunal that all the twines in issue are used for commercial and industrial applications. The M800, M500 and M275 grades have traditionally been sold to the pulp and paper industry for use in baling applications. He described how recycled materials are baled for transport or storage before being processed. In addition, the smaller grades are sold to distributors of various bundling, baling and strapping implements for uses including the baling of paper and cardboard cartons. Mr. Pascoe added that, because of their strength, the twines are not targeted for household use; rather, the twines are for use in a machine where a minimum tensile strength is necessary.

Mr. Pascoe introduced Exhibit A-4, which is an M140 grade exported to the United States to be sold in the agricultural market. He explained that it is "basically the same" as the M140 grade in issue destined for commercial use. Both products are made on the same equipment from the same raw materials using the same process. During cross-examination, Mr. Pascoe said that the agricultural twine is sold under several labels. On questions from the Tribunal, Mr. Pascoe confirmed that balers have agricultural uses and industrial uses.

With regard to agricultural twines, Mr. Pascoe explained that either knot strength or tensile strength may be significant. Twine is merely wrapped around large round bales of hay without a knot. Therefore, knot strength is not significant in this application. On smaller square bales of hay, the twine is knotted. Therefore, knot strength is significant in this application. As such, either knot strength or tensile strength is critical for an agricultural twine depending on its use, but typically not both. Mr. Pascoe added that this is similar to the twines in issue, with knot strength being more critical on the larger twines, as they are used on larger bundles or bales.

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2. For instance, a package of M90 contains 14,000 ft., where a package of M800 contains 1,450 ft.

The respondent's witness was Mr. Christian Alcindor, a tax interpretations officer with the Department of National Revenue. Mr. Alcindor told the Tribunal that the overall Act must be considered when interpreting the provisions of Schedule III to the Act.

For purposes of interpreting section 2 of Part XI, reference was first made to section 2 of Part IV of Schedule III, which reads "Baling wire for baling farm produce, and articles and materials to be used or consumed exclusively in the manufacture thereof." Mr. Alcindor emphasized that this exemption is qualified by farm use. He also referred to section 4 of Part VII of Schedule III prior to its amendment in 1981.[3] Under repealed section 4, an exemption was provided for "[m]aterials ... that enter directly into the cost of goods enumerated in *Customs Tariff* [item] ... 40922-1," which tariff item reads "[b]inder twine; wire and twine for baling farm produce." Mr. Alcindor contended that Part VII applied to goods that were imported and that the exemption in respect of tariff item 40922-1 included a farm use qualification. He concluded that the exemption provision in issue, being section 2 of Part XI, must be interpreted in light of the exemption for baler wire and the repealed exemption for goods in respect of tariff item 40922-1. Under this interpretation, the exemption provision in issue should be qualified by a farm use requirement.

In argument, counsel for the appellant submitted that there is no farm use requirement in the exemption provision in issue. Furthermore, as there is no trade definition of "baler twine," the ordinary and grammatical meaning should prevail. Based on certain dictionary definitions, counsel argued that the goods in issue qualify as twines and that baling is not restricted to farm applications.

Counsel for the appellant also made reference to the legislative history of section 2 of Part XI. Prior to 1962, the exemption for baler twine was found in Part IV of Schedule III under the heading "Farm and Forest." The exemption read "Baling twine ... for baling farm produce, and articles and materials to be used or consumed exclusively in process of manufacture thereof." In 1962, baling twine was removed from Part IV and added to Part XI under the heading "Miscellaneous." It now reads "Baler twine and materials to be used exclusively in the manufacture thereof." As is apparent, the reference to "for baling farm produce" was removed. Counsel submitted that, based on the legislative history of the exemption provision, it was Parliament's intention to remove any farm use requirement. This conclusion is supported by reference to the debates of the House of Commons[4] and the explanatory notes that accompanied the amendments to the Act in 1962.

This conclusion is also supported by reference to the French version of section 2 of Part XI and its legislative history. Counsel for the appellant noted that, throughout its existence, the French version of the exemption has been "*ficelle d'emballage*," meaning packaging twine. It was submitted that, because the French version was unchanged while the English version was amended to baler twine from baling twine, Parliament intended the broadest possible interpretation of baler twine.[5] If Parliament had intended a farm use qualification, it could have made an appropriate amendment to the French version.[6]

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3. S.C. 1980-81-82-83, c. 68, s. 32.
4. House of Commons Debates (19 November 1962) at 1773.
5. However, the farm use requirement was removed from the French version as well as from the English version.
6. Counsel for the appellant suggested that Parliament could have adopted "*ficelle, presses ramasseuses*" or "*ficelle d'engerbage*" to impose a farm use requirement.

Counsel for the appellant acknowledged that the French version of the exemption is broader than the English version. As such, the English version should narrow the otherwise broad scope of the French version. The exemption, therefore, should not apply to all packaging twines, rather, only to baler twine. Counsel explained that the appeal was limited to the goods in issue and abandoned with respect to the other twines identified in the appellant's brief, in recognition that the exemption was limited to baler twines.

Counsel for the respondent argued that the amendment to the exemption provision at issue was made for two reasons. First, materials that were used in the manufacture of baler twine would gain exemption. Second, the exemption was extended in a minor way to those engaged in the agricultural and tobacco industries.[7] Counsel added that, though the bill that was introduced in the House of Commons to amend the Act[8] indicated that the exemption for baler twine was "regardless of use," this phrase was not adopted in the amended Act. Counsel submitted that this omission was intended to restrict the scope of the exemption.

Counsel for the respondent contended that prior to its repeal in 1981, section 4 of Part VII of Schedule III provided an exemption for "[b]inder twine; wire and twine for baling farm produce.[9]" Furthermore, the Act presently contains an exemption for baling wire for baling farm produce[10] and for baler twine and materials for use exclusively in the manufacture thereof.[11] As such, prior to 1981, the word "baler" appeared three times in the Act, two of which were qualified by a farm use requirement. Counsel concluded that, in light of Parliament's stated intention[12] and with reference to the Act as a whole, the exemption provision at issue should be read with a farm use qualification.

After acknowledging that both versions of the Act are equally authoritative, counsel for the respondent reiterated that the English version is more restrictive. Thus, in reconciling the English and French versions, counsel agreed that the former should prevail, as it permits only one possible meaning to the latter. Counsel submitted, however, that the normal rules of construction still apply in interpreting section 2 of Part XI. It was acknowledged that the grammatical and ordinary meaning of the word "baler" may include applications outside of an agricultural setting. However, counsel submitted that, based on the legislative history of the exemption provision and the stated intention of Parliament, the exemption at issue is limited to baler twine used for farm purposes and tobacco products. Counsel reminded the Tribunal that the goods in issue are intended for industrial or commercial use.

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7 In support of the second proposition, counsel for the respondent referred to the debates of the House of Commons, *supra*, note 4.

8. Bill C-80, *An Act to amend the Excise Tax Act*, 1st Sess., 25th Parl., 1962.

9. Counsel for the respondent seems to have overlooked the actual wording of this exemption, which covered "[m]aterials, not including plant equipment consumed in process of manufacture or production, that enter directly into the cost of goods enumerated in *Customs Tariff* [item] ... 40922-1." Thus, the exemption was not for the goods enumerated in the tariff items, rather, the materials that enter directly into the cost of their manufacture or production.

10. Section 2 of Part IV of Schedule III to the Act.

11. Section 2 of Part XI of Schedule III to the Act.

12. *Supra*, note 4.

With respect to the reconciliation of the English and French versions of section 2 of Part XI, the Tribunal believes that the whole meaning of the exemption is best reflected in the English version. By adopting the narrow version, the Tribunal can achieve a meaning common to both texts that appears to be consistent with the purpose and general scheme of the Act.

With regard to the proposition advanced by counsel for the respondent that a farm use requirement should be read into section 2 of Part XI, the Tribunal is loath to read into the Act a qualification that does not expressly exist. Furthermore, it is abundantly clear from the legislative history of the exemption, as described by counsel for the appellant, that Parliament had no intention of limiting the exemption to baler twine used in farm applications. This conclusion is strengthened by reference to the debates of the House of Commons.

The uncontroverted evidence of Mr. Pascoe was that the goods in issue, being those contained in Exhibit A-1, are used for baling in industrial and commercial applications. Based on the testimony of Mr. Pascoe and its understanding of the grammatical and ordinary meaning of "baler twine," the Tribunal believes that the goods in issue can be considered baler twine. As the exemption of section 2 of Part XI applies to baler twine, without further qualification as to end use, the Tribunal believes that the goods in issue qualify for exemption from FST pursuant to this provision.

Accordingly, the appeal is allowed. The Tribunal refers the matter back to the respondent for reconsideration of the appellant's application for refund.

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