

Ottawa, Friday, November 22, 1996

Appeal No. AP-95-259

IN THE MATTER OF an appeal heard on June 24, 1996, 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 August 31, 1994, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

PACCAR OF CANADA LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Lyle M. Russell
Lyle M. Russell
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-95-259

PACCAR OF CANADA 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 an application for a refund of excise tax paid on air conditioners installed in highway truck tractors. The issue in this appeal is whether the respondent properly imposed an excise tax on air conditioners installed in highway truck tractors imported by the appellant. More particularly, the Tribunal must determine whether highway truck tractors are trucks within the meaning attributed to this word in section 7 of Schedule I to the *Excise Tax Act*.

HELD: The appeal is allowed. The evidence adduced in this hearing clearly leads to the conclusion that a highway truck tractor is a tractor used on the highway to transport (or truck) goods from one place to another. The fact that the tractor must be combined with a semi-trailer to do its work of trucking does not mean that, by itself, it is a truck, nor would it be accurate to say that the semi-trailer alone is a truck. The Tribunal finds that the vehicles in issue are highway truck tractors, that they are a type of tractor rather than a type of truck and that the air conditioners installed in them at the time of importation are not subject to the \$100 excise tax imposed by section 7 of Schedule I to the *Excise Tax Act*.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	June 24, 1996
Date of Decision:	November 22, 1996
Tribunal Members:	Lyle M. Russell, Presiding Member Arthur B. Trudeau, Member Desmond Hallissey, Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Richard G. Dearden, for the appellant Lyndsay K. Jeanes, for the respondent

Appeal No. AP-95-259

PACCAR OF CANADA LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LYLE M. RUSSELL, 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 a determination of the Minister of National Revenue dated October 21, 1993, that rejected an application for a refund of excise tax paid on air conditioners installed in highway truck tractors.

The issue in this appeal is whether the respondent properly imposed an excise tax on air conditioners installed in highway truck tractors imported by the appellant. More particularly, the Tribunal must determine whether highway truck tractors are trucks within the meaning attributed to this word in section 7 of Schedule I to the Act.

For the purposes of this appeal, the relevant provisions of the Act read as follows:

23. (1) Whenever goods mentioned in Schedules I and II are imported into Canada or manufactured or produced in Canada and delivered to a purchaser thereof, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this or any other Act or law, an excise tax in respect of those goods at the rate set opposite the applicable item in whichever of those Schedules is applicable computed, where that rate is specified as a percentage, on the duty paid value or the sale price, as the case may be.

[Schedule I to the Act]

7. Air conditioners designed for use in automobiles, station wagons, vans or trucks whether
- (a) separate, or
 - (b) included as permanently installed equipment in an automobile, station wagon, van or truck at the time of sale or importation of the vehicle by the manufacturer or importer thereof, as the case may be, one hundred dollars

and, for purposes of this section and section 8, an evaporator unit designed for use with or as part of an automotive type air conditioning system shall be deemed to be an air conditioner described in this section except where the evaporator unit is used for repair or replacement purposes.

At the hearing, two witnesses testified on behalf of the appellant. The first witness, Mr. Arlen E. Riggs, Manager, Product Safety and Compliance, Peterbilt Motors Company, A Division of Paccar (Peterbilt), Denton, Texas, testified about the differences between the highway tractors imported by

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

the appellant and the chassis cabs produced by Peterbilt for sale to dealers that have them converted into trucks by the addition of a body or other structure by a “final vehicle manufacturer.” He explained that, as they leave the Peterbilt factory, the highway tractors are complete vehicles ready to do their work of hauling a semi-trailer, whereas the chassis cabs are incomplete vehicles, incapable of doing any work until a cargo-carrying body or other structure, such as a winch and crane for towing, is added. The tractor is coupled to a semi-trailer by means of a fifth wheel assembly which provides a point of articulation, or pivot, between the two vehicles, allowing better manoeuvrability in turns and better contact with the ground when travelling over uneven terrain. Mr. Riggs identified some of the differences that exist between chassis cabs which will ultimately become trucks and tractors, including differences in the braking systems.

Mr. Craig Fisher, General Marketing Manager for Peterbilt, also testified on behalf of the appellant. He testified that Peterbilt manufactures both “trucks” and “tractors.” He said that customers know whether they want a “truck” or a “tractor.” Mr. Fisher explained to the Tribunal the procedure that Peterbilt goes through when a customer orders a “truck” or a “tractor.” He explained that there are different options available, depending on whether the customer orders a truck or a tractor. Mr. Fisher also listed some of the different models that Peterbilt manufactures. He explained that the tractors that Peterbilt manufactures can be used to haul oil tankers or other types of trailers to carry various kinds of goods.

Mr. Fisher also went through some of the structural differences that exist between “trucks” and “tractors.” For example, he testified that brakes are larger on a truck than on a tractor because a truck usually carries a bigger load. Furthermore, a tractor usually has a 12,000-lb. front axle and a 40,000-lb. rear axle, compared to a truck for which an 18,000- to 20,000-lb. front axle and a 52,000-lb. rear axle are standard. Mr. Fisher also testified that one of the main distinguishing factors between a truck and a tractor is the fact that a tractor has a fifth wheel. He explained that Peterbilt manufactures trucks to carry a load from one point to another, while Peterbilt sells and markets tractors to haul semi-trailers which carry the load from one point to another.

In cross-examination, Mr. Fisher testified that Peterbilt directs its advertisement towards people who buy tractors and people who buy trucks. He also acknowledged that Peterbilt advertises its trucks and tractors in various trucking magazines such as *Motor Truck*, *Truck News* and *Today's Trucking*. He explained that Peterbilt tractors are still tractors even though they are advertised in trucking magazines. He said that advertisements which refer to “Ford Trucks” or “Kenworth Truck Co. A Division of PACCAR,” for example, simply refer to the name of the companies that sell the tractors. Mr. Fisher acknowledged that certain advertisements which he was shown by counsel for the respondent appear to refer to some of the vehicles as trucks, vehicles which he considers to be tractors. He reiterated that most of the pictures which he was shown were pictures of tractors and not trucks.

One witness testified on behalf of the respondent, Mr. Gary K. Corcoran, President of Highway Safety Concepts. In this capacity and throughout his 30-year career with the Ontario Ministry of Transportation, Mr. Corcoran testified that he acquired knowledge about the trucking industry. Counsel for the respondent requested that Mr. Corcoran be qualified as an expert with respect to what constitutes a truck. The Tribunal denied the request and simply accepted to hear Mr. Corcoran as a witness with some knowledge in the area of trucking and the regulation of transport and trucking in Ontario. He testified that trucks are vehicles which are designed to move goods from one point to another. He said that, in his view, a

tractor trailer is a truck because its function is to carry a load of goods from one point to another. He explained that the weight of the load is distributed between the truck tractor and the trailer.

According to Mr. Corcoran, when the truck tractor and the trailer are combined, this results in an articulated truck. He said that a tractor trailer is simply a type of truck which allows for better manoeuvrability in difficult areas, such as small towns. He referred to a tow truck as an example of a type of truck which hauls goods instead of carrying them. According to Mr. Corcoran, a tractor is normally an off-road vehicle, for example, for use in a farming or logging operation. This type of tractor can also be referred to as an internal combustion tractor. Mr. Corcoran explained that trucks and tractors have similar characteristics. For example, both trucks and tractors have an internal combustion engine. He also explained why the brakes on a highway truck tractor are different from the brakes on a straight truck. He said that a truck with or without a fifth wheel is still a truck. He testified that, in his view, the highway truck tractors imported by the appellant are trucks and not tractors.

In cross-examination, Mr. Corcoran testified that a highway truck tractor can be considered an internal combustion tractor. He referred to the Ontario *Highway Traffic Act*,² which defines any vehicle that has permanently attached thereto a truck or a delivery body as a commercial motor vehicle. These include highway truck tractors, hearses, ambulances and casket wagons. Mr. Corcoran also described characteristics that are common to both trucks and highway truck tractors under provincial legislation and regulations. He also talked about the different types of licences needed to drive different vehicles. Mr. Corcoran testified that, in his view, the highway truck tractors that were imported by the appellant are trucks, although they may be called a multitude of things such as “commercial motor vehicles,” “lead units,” “power units,” “rigs,” “tractors” or “truck tractors.”

Counsel for the appellant argued that, as the term “truck” is not defined in the Act, it must be given its ordinary meaning. According to several dictionaries and a 1982 decision of the Tariff Board relating to armoured amphibious vehicles, a truck is a vehicle for carrying heavy loads. He argued that, since the Act refers to highway truck tractors as well as to trucks, the two terms must be given different meanings. It was his contention that trucks carry heavy loads, while truck tractors haul heavy loads carried in semi-trailers. He argued that dictionary definitions of “tractor” support this distinction, as did the evidence of witnesses for both the appellant and the respondent in respect of the drawings used in the “Ontario Classified Driver Licensing System’s Quick Check Chart” to illustrate the various kinds of vehicles that may be driven with different classes of licence (Exhibit A-16). This distinction between tractors and straight trucks was also evident in three other exhibits that had been put to Mr. Corcoran: Exhibit A-27, “The Official Air Brake Handbook”; Exhibit A-28, the 1985 edition of Quebec’s “Vehicle Dimensions and Weight Limits”; and Exhibit A-29, a report of the Interjurisdictional Committee on Vehicle Weights and Dimensions entitled “Heavy Truck Weight and Dimension Regulations for Interprovincial Operations in Canada.”

Counsel for the appellant further argued that, to determine Parliament’s intent in using the terms “truck” and “highway truck tractor” in the Act, the Tribunal should have regard to certain provisions of the *Customs Tariff*³ and the *Income Tax Act*⁴ as statutes *in pari materia*. The *Customs Tariff* has a provision

2. R.S.O. 1990, c. H.8.

3. R.S.C. 1985, c. 41 (3rd Supp.).

4. R.S.C. 1985, c. 1 (5th Supp.).

for “road tractors for semi-trailers” and, prior to the adoption of the *Harmonized Commodity Description and Coding System*,⁵ distinguished between highway truck tractors and other types of internal combustion tractors. Section 4601 of the *Income Tax Regulations*⁶ treats trucks and tractors as distinct vehicles. He also pointed to similar distinctions in the Ontario *Retail Sales Tax Act*.⁷

Referring to the testimony of witnesses for Peterbilt about how the company distinguishes between tractors and chassis cabs for trucks in its design, production, ordering and marketing activities, counsel for the appellant submitted that there was ample evidence for the Tribunal to conclude that the essential characteristic of a highway tractor is to haul a semi-trailer with cargo inside it, while that of a truck is to carry cargo itself; that Peterbilt highway tractors are not trucks; and, thus, that air conditioners installed in the Peterbilt tractors are not subject to the \$100 excise tax. If the Tribunal were, nevertheless, to determine that the Peterbilt tractors were trucks, as determined by the respondent, counsel for the appellant argued that, having regard to the legislative history of the relevant sections of the Act, the Tribunal should determine that the Peterbilt units are not the type of light truck envisaged by the taxing provision for automotive air conditioners.

Counsel for the respondent argued that highway truck tractors are simply one type of truck and that, since air conditioners for such vehicles are not exempted from payment of the special excise tax under section 8 of Schedule I to the Act, they are taxable pursuant to section 7 of that schedule. Counsel argued that the legislative history of the taxing provision introduced in 1976 was not relevant to interpreting the provisions applicable to the transactions under appeal, which took place from June 1991 to May 1993. By that time, and coincident with the introduction of the Goods and Services Tax, the Act had been amended such that an earlier exemption for air conditioners for highway truck tractors had been repealed. Thus, in the view of counsel for the respondent, the \$100 excise tax now applied to air conditioners for all trucks, except those qualifying for sale as zero-rated supplies pursuant to Part IX of the Act.

Counsel for the respondent argued that neither dictionary definitions nor Mr. Corcoran’s testimony supported the view that highway truck tractors are not trucks because they haul, rather than carry, goods. In her submission, what defines a truck is its ability to transport goods from one place to another. Whether it does this by hauling another vehicle or by carrying the goods itself does not matter. The Tariff Board decision cited by counsel for the appellant did not, she contended, support his argument because the Tariff Board had not considered the question of whether towing or hauling goods was different from carrying goods. She suggested that, rather than rely on dictionary definitions, the Tribunal should look at the scheme of the Act and determine the intent of Parliament. She could see no reason why Parliament would have intended that air conditioners for large, heavy straight trucks would be taxed, but not air conditioners for truck tractors. She argued that the Tribunal should not look to the *Customs Tariff* and the *Income Tax Act* for assistance in interpreting the Act. Each act has a different purpose and, thus, they are not statutes *in pari materia*.

Much of the evidence given by the witnesses for Peterbilt was, according to counsel for the respondent, either contradictory or irrelevant - “they can call it what they want ... but ... it is just simply a

5. Customs Co-operation Council, 1st ed., Brussels, 1987.

6. C.R.C. 1978, c. 945.

7. R.S.O. 1990, c. R.31.

truck.⁸ Vehicles described as tractors by the witnesses are, she alleged, advertised in trucking magazines as trucks. She further argued that, just because official documents such as Exhibit A-29 contain separate definitions for tractors, trucks and B train doubles, it does not mean that a tractor cannot be considered to be a category of truck. She urged the Tribunal to accept the evidence of Mr. Corcoran to the effect that, as she put it, “truck tractors, truck trailer, rigs, anything else you want to call them, are merely categories of trucks.”⁹

The Tribunal agrees with counsel for the appellant that Parliament must have intended the terms “trucks” and “highway truck tractors” to mean different things or else it would not have used both expressions in the same statute. The evidence is that provincial regulations governing road transport differentiate between trucks, tractors and trailers, and these distinctions are well understood by those engaged in, or knowledgeable about, the trucking industry. It is reasonable to infer that those responsible for drafting the rather complex excise tax provisions that have applied at one time or another to trucks and their equipment, including air conditioners, were aware of these distinctions.

The Tribunal did not find the bulk of Mr. Corcoran’s evidence to be particularly helpful in defining “truck.” Obviously, the term cannot refer to all commercial vehicles, including buses, taxis and hearses, nor can trucks be defined as all vehicles designed to move freight from one place to another, as this would include rail cars, ships, aircraft and highway trailers. The Tribunal does, however, agree with Mr. Corcoran’s view that the distinction between hauling and carrying favoured by counsel for the appellant is difficult to sustain, given that the tractor portion of a tractor-trailer combination carries the weight of part of the load contained in the semi-trailer. The Tribunal also finds plausible Mr. Corcoran’s view that, in the trucking industry and more generally, the term “truck” is often used to describe a variety of rigs, including tractor-trailers. Mr. Corcoran’s characterization of a tractor-trailer combination as an “articulated truck” rings true, taking into account Mr. Riggs’ description of the function of a fifth wheel as being to provide a point of articulation between the tractor and trailer. Indeed, it seems to the Tribunal that only in this context can all the words in the expression “highway truck tractor” be given meaning.

The evidence adduced in this hearing clearly leads to the conclusion that a highway truck tractor is a tractor used on the highway to transport (or truck) goods from one place to another. The fact that the tractor must be combined with a semi-trailer to do its work of trucking does not mean that, by itself, it is a truck, nor would it be accurate to say that the semi-trailer alone is a truck. Peterbilt clearly differentiates between truck chassis cabs and highway tractors in all aspects of its operations, and provincial licensing and safety regulations also distinguish between straight trucks and tractor trailers. This evidence is not, in the Tribunal’s view, discredited by the trucking magazine advertisements submitted in evidence by counsel for the respondent, such as the one in Exhibit B-5 picturing a Peterbilt tractor attached to a semi-trailer and using the word “truck” in a text that appears to apply only to the tractor. The goal of such advertisements is obviously to persuade those in the trucking industry to buy Peterbilt power units for use in trucking but, again, this does not, in the Tribunal’s view, make them trucks.

8. *Transcript of Argument*, June 24, 1996, at 62-63.

9. *Ibid.* at 68.

The Tribunal finds that the vehicles in issue are highway truck tractors, that they are a type of tractor rather than a type of truck and that the air conditioners installed in them at the time of importation are not subject to the \$100 excise tax imposed by section 7 of Schedule I to the Act.

Accordingly, the appeal is allowed.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member