


ST 2324 (as amended 26/3/87) - SALES TAX : CONCRETE TRANSIT MIXERS

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TAXATION RULING NO. ST 2324 (as amended 26/3/87)

SALES TAX : CONCRETE TRANSIT MIXERS

F.O.I. EMBARGO: May be released

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| I 1210537 | CONCRETE TRANSIT MIXERS | SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT; ITEM 7, THIRD SCHEDULE; SALES TAX REGULATIONS: REGULATION 4. |

PREAMBLE In 1981 the definitions of "aids to manufacture" in the First Schedule to the Sales Tax (Exemptions and Classifications) Act and in the Sales Tax Regulations were amended to broaden and clarify the exemptions available to manufacturers for their manufacturing equipment. Both definitions, however, retained the exclusion relating to road vehicles (and parts therefor) of the kinds ordinarily used for the transport of persons or the transport or delivery of goods.

2. At the same time a definition of "parts", in relation to road vehicles, was enacted in the First Schedule and in the Sales Tax Regulations. This definition was expressed to include -

".... bodies for those road vehicles (including insulated bodies, tank bodies and other bodies designed for the transport or delivery of goods of particular kinds), underbody hoists and other equipment or apparatus of a kind ordinarily fitted to road vehicles, being equipment or apparatus used in connection with the transport or delivery of goods by those road vehicles".

3. The purpose of the definition of "parts" was to include within its scope goods such as refrigerated truck bodies, concrete transit mixers etc, which are ordinarily attached to a road vehicle for use in the transport or delivery of goods. Goods covered by the definition of "parts" became excluded from -

(a) any exemption item which expressly excluded road vehicles and parts for road vehicles; and

(b) the definition of "aids to manufacture".

4. In 1983 one such exemption item, item 113F, was removed from the First Schedule and became item 7 in the Third Schedule. The purpose of this amendment was to apply tax at the rate of 7.5% to goods which were previously conditionally exempt. However, no definition of "parts" was enacted in the Third Schedule, so that in the interpretation of item 7 the word

"parts" would take its ordinary meaning.

5. Item 7, Third Schedule, was repealed with effect from 20 August 1986.

FACTS

6. In between these legislative developments a manufacturer of concrete claimed that its concrete transit mixer qualified for exemption from sales tax as aids to manufacture or, alternatively, was taxable at 7.5% under sub-item 7(1) in the Third Schedule. This office did not accept either view but maintained that the transit mixer was subject to sales tax at the general rate of 20%. The manufacturer applied to the Supreme Court of New South Wales for an order declaring that the transit mixer was either exempt or subject to tax at 7.5%. The case came before Yeldham J. and is reported as *Pioneer Concrete (NSW) Pty Ltd v FC of T*, 86 ATC 4435; 17 ATR 733.

7. It was accepted that the transit mixer fell within the initial part of paragraph (a)(iii) of the definition of "aids to manufacture", i.e., it was equipment for use exclusively or primarily and principally in any processing or treatment for the purpose of bringing goods into, or maintaining goods in, the form or condition in which they are to be marketed or used by the manufacturer of the goods. It was argued, however, that the mixer was excluded from the definition by paragraph (e) which excludes road vehicles of the kinds ordinarily used for the transport of persons or the transport or delivery of goods or by paragraph (m), as a part for such a road vehicle.

8. The Court found, on the authority of the decision of Kitto J in *Ready-Mixed Concrete (Victoria) Pty Ltd v FC of T*, (1969) 118 CLR 177, that the mixer was a functionally separate and independent unit of property from the truck to which it was attached and could not, therefore, be said to be a "road vehicle" excluded by paragraph (e).

9. In the context of paragraph (m) it was submitted on behalf of the manufacturer that the definition of "parts" was directed to accessories of vehicles to enable them to function more efficiently in transporting or delivering goods, as distinct from manufacturing them, and that as the mixer had to do with manufacture, it was not in connection with the barely subsidiary or incidental function of transportation, (86 ATC at p.4439; 17 ATR at p.737). This submission was rejected by the Court because an important function of the road vehicle as a whole was in transporting concrete from the manufacturer's plant to various job sites for delivery there. Yeldham J. observed :

"The expression 'in connection with' involves a substantial relation in a practical business sense between the equipment and the transportation or delivery of goods (*Berry v FC of T*, 89 CLR 653 at p.659; *Emery v Inland Revenue Commissioner* [1981] STC 150 at p.171). In my opinion there is here a substantial connection (which need not be the only connection so long as it is not incidental) between the transport and delivery of concrete and the use of a concrete mixer ordinarily fitted to road vehicles used for such transport or delivery. There is no doubt, as [counsel for the Commissioner] submitted, that without the mixer the plaintiff could not transport concrete

from its premises to building sites" (86 ATC at p.4439; 17 ATR at p.737).

10. The decision in DC of T v Fowler Rex (NSW) Pty Ltd, 118 CLR 160 (i.e. that a concrete transit mixer is not a part for a road vehicle) did not apply in the context of the "aids to manufacture" definition because a definition of "parts" had been included in the legislation since that decision. Yeldham J. referred to the amending legislation at 86 ATC pp.4439-40; 17 ATR pp.737-8 :-

"Although the conclusion which I have expressed really renders it unnecessary to deal with the matter further, I should mention that [counsel for the Commissioner] relied also on the provisions of section 15AB of the Acts Interpretation Act (as inserted by the Acts Interpretation Act No.27 of 1984) and the Explanatory Memorandum given by the Treasurer at the time being when the relevant definition of 'parts' was inserted. The Explanatory Memorandum (Ex.1) discloses that at p.18 it was said that the new definition would include within its ambit equipment or apparatus, such as 'cranes in transit, concrete mixers'. Whilst this, of course, can only be of relevance within the limits laid down by section 15AB, it does tend to confirm the view at which I have independently arrived".

11. Until its repeal sub-item 7(1) in the Third Schedule covered the following goods :-

"Machinery, implements, apparatus and materials (other than road vehicles of the kind ordinarily used for the transport of persons or the transport or delivery of goods, towing trucks or salvage vehicles, or parts for those road vehicles, towing trucks or salvage vehicles) for use exclusively or primarily and principally, for business or industrial purposes, in - ...

(c) constructing, maintaining or repairing
building or other structures".

12. It was submitted on behalf of the manufacturer that the mixer was adapted for use in the construction of buildings because it performed an integral and necessary step as part of the process of construction, i.e. the manufacture of concrete. On the other hand the Commissioner took the view that the mixer was not for use in construction but for use in making concrete. Counsel for the Commissioner argued that the business use of the mixer was anterior to the construction process and that it could not be said to be used "in" constructing buildings, whether the word "in" was read as "directly in" or "in the course of".

13. Yeldham J. considered the proper question to be whether the mixer was used principally for industrial purposes in the course of the construction of a building. He found that the transit mixer was in much the same position as if it had been used on site for mixing concrete for use in the construction of a building. He supported this approach by reference to Amalgamated Zinc (De Bavay's) Ltd v FC of T, 54 CLR 295, to conclude that the word "in" should be construed as meaning "in the course of" or "in connection with". The concrete mixer was

therefore held to be covered by sub-item 7(1) in the Third Schedule and taxable at the lower rate of 7.5% (which later became 10%).

RULING

14. On the basis of the Court's decision it is accepted that concrete transit mixers which passed a taxing point between 1 January 1983 and 20 August 1986 were subject to sales tax at the Third Schedule rate (7.5% up to and including 19 September 1985, and 10% from 20 September 1985 to 19 August 1986) provided they were used exclusively or primarily and principally, for business or industrial purposes, in constructing buildings or other structures.

15. Where tax at the general rate of 20% was paid on transit mixers in the period mentioned in the preceding paragraph refunds of the resulting overpayments will be made provided any excess tax charged has been refunded to the taxpayer's customer and subject to the 3-year limit imposed by section 12C of the Sales Tax Procedure Act.

16. With the repeal of item 7 transit mixers are subject to tax at the general rate of 20% from 20 August 1986.

COMMISSIONER OF TAXATION
19 February 1987