

NOVA SCOTIA COURT OF APPEAL

Freeman, Bateman and Flinn, JJ.A.

**Cite as: Nova Scotia (Finance) v. Farmers Co-operative Dairy, 1995
NSCA 217**

BETWEEN:

MINISTER OF FINANCE

Appellant

- and -

FARMERS CO-OPERATIVE DAIRY

Respondent

)
) Leanne M. Rodwell-Hayes
) for the Appellant

)
) David Farrar
) for the Respondent

)
) Appeal Heard:
) December 4, 1995

)
) Judgment Delivered:
) December 4, 1995
)

THE COURT: Appeal dismissed per oral reasons for judgment of
Freeman, J.A., Bateman and Flinn, JJ.A., concurring

The reasons for judgment of the Court were delivered orally by:

FREEMAN, J.A.:

This is an appeal by the Minister of Finance from a judgment of the Nova Scotia Utilities and Review Board holding that "clean in place" equipment (the "CIP system"), used by the respondent to clean the interiors of tanks on its milk tanker trucks, is machinery or apparatus "used in the manufacture or production of goods for sale" and therefore entitled to exemption from the Health Services Tax under s. 12(1)(n) of the **Health Services Tax Act**, R.S.N.S. 1989, c. 198.

The respondent's drivers, milk graders licensed by the Nova Scotia Department of Agriculture, assess the quality of milk in farmers' tanks and, if acceptable, it is pumped into the tanks on their trucks. After it is unloaded at the dairy, the CIP system, which consists of hoses and a sprayhead inside the tank, is activated and goes through several stages. The first is a simple rinse with clean water, which results in a product used as animal feed. This is followed by a detergent wash, a rinse, and a spray containing a bactericide sanitizing compound which keeps the tank sterile for the next day's pickup.

In interpreting s. 12(1)(n), the Board relied on **Campbell v. Minister of Finance** (1980), 72 A.P.R. 288, 24 Nfld. & P.E.I.R. 345 affirmed 26 Nfld. & P.E.I.R. 288 and **Twin Cities Co-operative Dairy Limited v. Minister of Finance** (1981), 48 N.S.R. (2d) 571 in which milk tanks used for transporting liquid milk were found to be exempt. The appellant argues that those cases adopted the integrated plant theory which was no longer the law because of amendments to the Nova Scotia **Act** and such decisions as **Northland Fisheries Limited v. Nova Scotia (Minister of Finance)** (1987), 77 N.S.R. (2d) 361 and **Stora Forest Industries Ltd. v. Nova Scotia (Minister of Finance)** (1991), 105 N.S.R. (2d) 115. In my view, the integrated plant theory was not essential to the conclusions reached in **Campbell** and **Twin Cities**, which are not incompatible with the later cases.

In **Stora**, it was stated, at p. 118:

Under the scheme of the **Act** a s. 10(1)(h) [now s. 12(1)(n)] exemption cannot, by definition, apply to machinery or apparatus used with respect to materials prior to the start of their specific transformation or conversion during the particular manufacturing or production process required to turn them into identified goods for sale.

Machinery and apparatus used in connection with the material at and after this starting point, even for purposes only incidental to the commencement of actual manufacturing such as further handling or preparation, would appear to be *prima facie* eligible for the exemption. For

convenience, I will refer to "transportation in" as the cutoff point establishing s. 10(1)(h) [now s. 12(1)(n)] eligibility: the point where the materials may reasonably be said to be at the start of the actual process of losing their characteristics as mere materials and acquiring the characteristics of the goods being made for sale.

The transportation in of raw or processed materials in the **Stora** sense is neutral in that it does not alter the characteristics of the materials, it merely changes the location. Where manufacturing or production actually begins is a question of fact that can vary depending on the materials or the goods into which they are to be transformed. Milk is so highly perishable that a major object of the manufacturing process, of liquid milk at least, is to make it less perishable. Every step taken to further that objective is part of the process. Holding the milk in sanitized and insulated tanks is therefore essential to the process. It follows that equipment for sanitizing the tanks must be a necessary part of that process. Merely moving the tanks from the farm to the plant, on the other hand, is not part of the manufacturing process contemplated by the **Act**.

The test in **Stora** was stated as follows:

. . . Cases decided since 1982 suggest the following as a simple test or guide applicable to the facts of the present case: is the machinery and apparatus in question reasonably essential to the manufacture or production of goods for sale? Perhaps that becomes clearer if stated in the negative: can the goods for sale be manufactured or produced without the step in the manufacturing process performed by the machinery or apparatus in question? . . .

The answer is obvious in the present circumstances: milk would not be fit for human consumption if not held in clean containers at every stage. Cleanliness is an essential part of the manufacturing or production process that must begin the moment the milk is received.

In the **Northland Fisheries** case, which was followed in **Stora**, MacIntosh, J. held that the insulated boxes in which fish are transported to be exempt. He stated:

Raw fish must be protected from spoilage. Without the insulated boxes, the fish would be transformed or converted into a rather unmarketable product. Where, as here, it is necessary to move the raw fish from one area to another, these insulated boxes are a necessary apparatus to ensure a saleable product will result. They are an integral part of the apparatus used to produce a saleable product. They are used to transport or convert fish into a different state from that in which it originally existed, i.e. from a perishable to a nonperishable state.

In the Board's judgment, Vice-chairman Garber made the following finding:

The description of the process of milk collection and the need to keep the tanker bodies clean coupled with the regulatory inspections and requirements for record keeping suggest to the Board that this equipment should be considered as part of the manufacture or production process and exempt from taxation. The strict requirements for transporting milk to the plant is considerably different from the normal transportation of raw materials to a plant.

...

... Given that the tanker bodies have been declared exempt from taxation because they are used in the manufacture or production of goods for sale, it is difficult to understand upon what basis it could be held that the new CIP equipment which is used to clean the tanks was not exempt from taxation.

The CIP truck wash equipment is an extension to a system which is used to clean the rest of the production facilities and which is exempt. It is used to clean tanker bodies which are exempt. In addition the CIP truck wash equipment is used to produce goods for sale in the form of animal feed. For all of these reasons the CIP truck wash equipment is entitled to an exemption under **s. 12(1)(n)**.

In arriving at this conclusion, the Board was not in error. The appeal is dismissed with costs of \$1,000, inclusive of disbursements.

J.A.

Concurred in:

Bateman, J.A.

Flinn, J.A.

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REASONS FOR
JUDGMENT BY:
FREEMAN, J.A.
(orally)