



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2011-068

81794 Canada Limited/
Liquiterminals Ltd.

v.

Minister of National Revenue

*Decision and reasons issued
Friday, February 22, 2013*

TABLE OF CONTENTS

DECISION..... i
STATEMENT OF REASONS 1
 BACKGROUND 1
 ANALYSIS..... 1
 DECISION 2

IN THE MATTER OF an appeal pursuant to 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 February 13, 2012, with respect to notices of objection served pursuant to section 81.17 of the *Excise Tax Act*;

AND IN THE MATTER OF the parties' written consent to a decision disposing of the appeal without an oral hearing pursuant to rule 45 of the *Canadian International Trade Tribunal Rules*, S.O.R./91-499.

BETWEEN

81794 CANADA LIMITED/LIQUITERMINALS LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION

The appeal is allowed. The Tribunal refers the matter back to the Minister of National Revenue for reassessment and reconsideration on the basis that 81794 Canada Limited/Liquiterminals Ltd. paid an amount of \$188,079.47 of tax in respect of diesel fuel exported from Canada and is allowed to receive a payment equal to that amount pursuant to section 68.1 of the *Excise Tax Act*.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Jason W. Downey
Jason W. Downey
Member

Eric Wildhaber
Eric Wildhaber
Secretary

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Serge Fréchette, Member
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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal pursuant to section 81.19 of the *Excise Tax Act*¹ from a decision of the Minister of National Revenue (the Minister), dated February 13, 2012, with respect to notices of objection served pursuant to section 81.17.

2. This decision dismissed applications made by 81794 Canada Limited/Liquiterminals Ltd. (Liquiterminals) for refunds of excise tax paid on diesel fuel purchased in Canada but exported to the United States between 1990 and 2003. The Minister dismissed the applications because the information provided by Liquiterminals did not meet the documentary requirements of the *Act*.

3. The issue in this appeal is whether Liquiterminals is entitled to a refund of excise tax paid in respect of goods that have been exported from Canada pursuant to subsection 68.1(1) of the *Act*.

ANALYSIS

4. Subsection 68.1(1) of the *Act* allows a person to apply, within a specified time frame, for a refund of excise tax paid in respect of goods that have been exported from Canada. It provides as follows:

68.1(1) Where tax under this Act has been paid in respect of any goods and a person has, in accordance with regulations made by the Minister, exported the goods from Canada, an amount equal to the amount of that tax shall, subject to this Part, be paid to that person if that person applies therefor within two years after the export of the goods.

68.1(1) Lorsque la taxe prévue par la présente loi a été payée sur des marchandises qu'une personne a exportées du Canada en conformité avec les règlements pris par le ministre, un montant égal à cette taxe est, sous réserve des autres dispositions de la présente partie, payé à la personne si elle en fait la demande dans les deux ans suivant l'exportation des marchandises.

5. Pursuant to subsection 68.1(3), a refund of excise tax is, in principle, not available in respect of diesel fuel transported out of the country in the fuel tank of a vehicle. Subsection 68.1(3) provides as follows:

68.1(3) For greater certainty, no amount is payable to a person under subsection (1) in respect of tax paid on gasoline or diesel fuel transported out of Canada in the fuel tank of the vehicle that is used for that transportation.

68.1(3) Il est entendu qu'aucun montant n'est à payer à une personne aux termes du paragraphe (1) au titre de la taxe payée sur l'essence ou le combustible diesel qui est transporté en dehors du Canada dans le réservoir à combustible du véhicule qui sert à ce transport.

6. However, subsection 68.1(3) of the *Act* only applies in respect of applications for refund received by the Minister after February 17, 2003.²

7. Therefore, in summary, an application for a refund of excise tax paid in respect of exported diesel fuel must be made within two years after the export of the goods. In the case of diesel fuel transported out of Canada in the fuel tank of a vehicle used for that transportation, the application must also have been made on or before February 17, 2003.

1. R.S.C. 1985, c. E-15 [*Act*].

2. See subsection 63(2) of the *Budget Implementation Act, 2003*, S.C. 2003, c. 15.

8. On December 13, 2012, the parties filed with the Tribunal a written consent to a decision disposing of the appeal. On December 17, 2012, and January 2, 2013, with the consent of the Canada Border Services Agency, counsel for Liquiterminals requested that the Tribunal dispose of the appeal without an oral hearing pursuant to rule 45(a) of the *Canadian International Trade Tribunal Rules* (the *Rules*)³ in accordance with the previously filed written consent to a decision.

9. In accordance with the consent filed by the parties and its powers under rule 45 of the *Rules*, the Tribunal hereby disposes of the appeal without an oral hearing.

DECISION

10. The appeal is allowed and the matter is referred back to the Minister for reassessment and reconsideration on the basis that Liquiterminals paid an amount of \$188,079.47 of tax in respect of diesel fuel exported from Canada and is allowed to receive a payment equal to that amount pursuant to section 68.1 of the *Excise Tax Act*, as detailed below:

Period	Notice of Determination	Amount in Dispute	Amount Allowed	Amount Denied
April 1990 to December 1990	20050921SOR203	\$2,192.22	\$2,192.22	0
August 1993 to June 1994	20050921SOR205	\$867.12	\$867.12	0
July 1994 to June 1995	20050921SOR209	\$8,862.68	\$8,862.68	0
July 1995 to December 1996	20050921SOR206	\$16,875.16	\$16,875.16	0
January 1997 to June 1997	20050921SOR210	\$6,716.29	\$6,716.29	0
July 1997 to May 1999	20050921SOR207	\$44,900.34	\$44,900.34	0
June 1999 to December 1999	20050921SOR201	\$16,854.48	\$16,854.48	0
January 2000 to August 2000	20050921SOR204	\$20,661.08	\$20,661.08	0
September 2000 to December 2000	20050921SOR202	\$12,651.64	\$12,651.64	0

3. S.O.R./91-499.

Period	Notice of Determination	Amount in Dispute	Amount Allowed	Amount Denied
January 2001 to March 2001	20050921SOR211	\$7,607.00	\$7,607.00	0
April 2001 to June 2001	20050921SOR216	\$7,565.20	\$7,565.20	0
July 2001 to December 2001	20050921SOR208	\$15,932.70	\$15,932.70	0
January 2002 to March 2002	20050921SOR212	\$9,115.48	\$9,115.48	0
April 2002 to June 2002	20050921SOR213	\$8,795.64	\$8,795.64	0
July 2002 to September 2002	20050921SOR214	\$8,482.44	\$8,482.44	0
October 2002 to March 2003	20050921SOR215	\$19,265.48	0	*\$19,265.48
Total		\$207,344.95	\$188,079.47	\$19,265.48

*The claim for the period from October 2002 to March 31, 2003, was filed after February 17, 2003, making it invalid pursuant to subsection 68.1(3) of the *Act*.

Stephen A. Leach
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Presiding Member

Serge Fréchette
Serge Fréchette
Member

Jason W. Downey
Jason W. Downey
Member