



Ottawa, Wednesday, September 30, 1992

Appeal No. 2969

IN THE MATTER OF an appeal heard on September 14, 1992, under section 81.19 of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated December 18, 1987, relating to a notice of objection served under section 81.15 of the *Excise Tax Act*.

**BETWEEN**

**DUGGAN FUELS**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Michèle Blouin  
Michèle Blouin  
Presiding Member

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. 2969**

**DUGGAN FUELS**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue in this appeal is whether the Minister of National Revenue, on receipt of a notice of objection served by the appellant, was correct in confirming the assessment that fuel, sold as coloured diesel to farmers for "off-highway" use, was subject to sales tax by virtue of subsections 21(3.3) and 27(5) of the Excise Tax Act.*

**HELD:** *The appeal is dismissed.*

*Place of Hearing:* Ottawa, Ontario  
*Date of Hearing:* September 14, 1992  
*Date of Decision:* September 30, 1992

*Tribunal Members:* Michèle Blouin, Presiding Member  
Kathleen E. Macmillan, Member  
Sidney A. Fraleigh, Member

*Counsel for the Tribunal:* Clifford Sosnow

*Clerk of the Tribunal:* Dyna Côté

*Appearance:* Howard A. Baker, for the respondent

**Appeal No. 2969**

**DUGGAN FUELS**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member  
KATHLEEN E. MACMILLAN, Member  
SIDNEY A. FRALEIGH, Member

**REASONS FOR DECISION**

Duggan Fuels, the appellant, is a retailer of gasoline, clear diesel, coloured diesel, furnace oil and stove oil. During the assessment period from January 1, 1984, to March 31, 1987, the respondent, the Minister of National Revenue, determined, pursuant to subsections 21(3.3)<sup>1</sup> and 27(5)<sup>2</sup> of the *Excise Tax Act*, that the appellant was liable for federal sales and excise tax. While the appellant had purportedly purchased fuel for the tax-exempt purpose of heating and lighting, the appellant sold the fuel as coloured diesel fuel for "off-highway" use, an activity for which the tax exemption was not applicable.

The appellant filed an appeal of this decision with the predecessor to the Canadian International Trade Tribunal, the Tariff Board, on March 11, 1988. Although the appellant was granted several adjournments and requested that the appeal be heard on September 14, 1992, the appellant did not appear at the hearing nor did it have a designated counsel appear on its behalf.

In situations such as these, the Tribunal generally determines the outcome of the appeal on the basis of the documents placed on file. The appellant did not file a brief in support of its position in anticipation of the scheduled hearing. The only document filed by the appellant, a notice of assessment, did not pertain to the matter at hand.

In the Tribunal's view, the appellant has an evidentiary burden to prove that the respondent's assessment was incorrect. From an examination of the documents on file, the Tribunal considers that the appellant has failed to discharge this burden. The Tribunal has no basis on which to conclude that the appellant was incorrectly assessed.

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1. S.C., 1986, c. 9, subs. 11(3).

2. S.C., 1980-81, c. 68, subs. 10(8).

Accordingly, the appeal is dismissed.

Michèle Blouin  
Michèle Blouin  
Presiding Member

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member