

Ottawa, Tuesday, March 17, 1992

**Appeal No. 2970**

IN THE MATTER OF an appeal heard on January 20, 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 10, 1987, with respect to a  
notice of opposition served under section 81.15 of the *Excise  
Tax Act*.

**BETWEEN**

**LES PÉTROLES J. & G. GAUTHIER INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed. Since the appellant is deemed to be the manufacturer in accordance with paragraph 2(1)(e), it is responsible for paying the sales tax as set forth in subparagraph 27(1)(a)(i) of the *Excise Tax Act*.

John C. Coleman

John C. Coleman  
Presiding Member

Michèle Blouin

Michèle Blouin  
Member

Desmond Hallissey

Desmond Hallissey  
Member

Robert J. Martin

Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. 2970**

**LES PÉTROLES J. & G. GAUTHIER INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant did not pay the sales tax on the subsequent sale of petroleum products obtained from an unlicensed retailer. The latter had indicated on its invoices that all federal sales and excise taxes were included in the sale price. Since the appellant did not present any argument against the part of the assessment relating to the excise tax, the only matter at issue is to determine whether, in spite of the statement "all federal taxes included," the appellant is required to pay the sales tax under the Excise Tax Act.*

**HELD:** *The appeal is dismissed. There was no double taxation in this instance. Moreover, since the appellant is deemed to be the manufacturer of the goods under paragraph 2(1)(e), it is responsible for payment of the tax in accordance with subparagraph 27(1)(a)(i) of the Excise Tax Act.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: January 20, 1992  
Date of Decision: March 17, 1992*

*Tribunal Members: John C. Coleman, Presiding Member  
Michèle Blouin, Member  
Desmond Hallissey, Member*

*Counsel for the Tribunal: Gilles B. Legault*

*Clerk of the Tribunal: Dyna Côté*

*Appearances: Gaston Gauthier, for the appellant  
Alain Lafontaine, for the respondent*

**Appeal No. 2970**

**LES PÉTROLES J. & G. GAUTHIER INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: JOHN C. COLEMAN, Presiding Member  
MICHÈLE BLOUIN, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

This is an appeal under section 51.19 of the *Excise Tax Act*<sup>1</sup> (the Act).

On August 19, 1987, the appellant was assessed \$110,447.95 in taxes, penalties and interest for the period from October 1, 1983, to February 28, 1987. A notice of opposition served on August 26, 1986, was allowed in part by the Minister of National Revenue (the Minister), who granted the appellant an adjustment of \$8,111.03. However, the balance of \$102,479.48 remained payable owing to the fact that the appellant had not paid any tax on the subsequent sale of petroleum products obtained from an unlicensed retailer. The latter had indicated on its invoices that the federal sales and excise taxes were included in the sale price. According to the Minister, this statement on the invoices did not in any way relieve the appellant of its tax obligations under the Act. On February 9, 1988, the appellant appealed the Minister's decision before the Tribunal.

The Tribunal first notes that the appellant did not present any argument concerning the part of the assessment relating to the excise tax. For this reason, the only matter at issue is to determine whether the appellant is required to pay the sales tax even though the invoices for the purchases on which it is being required to pay the tax carry the statement "all federal taxes included." [Translation]

Subparagraph 27(1)(a)(i) of the Act<sup>2</sup> reads as follows:

*27.(1) There shall be imposed, levied and collected a consumption or sales tax of nine per cent on the sale price of all goods*

*(a) produced or manufactured in Canada*

*(i) payable, in any case other than a case mentioned in subparagraph (ii) or (iii), by the producer or manufacturer at the time when the goods are delivered to the purchaser or at the time when the property in the goods passes, whichever is the earlier,*

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1. R.S.C., 1970, c. E-13, now section 81.19, R.S.C., 1985, c. E-15, as amended.

2. Now subparagraph 50(1)(a)(i), R.S.C., 1985, c. E-15, as amended.

The appellant did not call any witnesses during the hearing. After arguing that the appellant had paid the tax to its supplier, counsel for the appellant claimed that the Act does not prohibit transactions of the type that occurred and that, therefore, the appellant was free to pay the tax at the time of the purchases at issue. Counsel further argued that the appellant cannot be subject to double taxation and that, given the unclear wording of the legislation, the appellant cannot be assessed under the Act. Counsel also used the wording of subsection 27(3) of the Act<sup>3</sup> as part of his argument and claimed, contrary to the respondent, that the tax was payable by the supplier not the appellant.

As for the respondent, his argument was based on the definition of the word "manufacturer" contained in paragraph 2(1)(e) of the Act. Under this provision, the appellant is deemed to be a manufacturer within the meaning of the Act because it does not sell gas directly to consumers. The appellant is therefore responsible for the tax as stipulated in subparagraph 27(1)(a)(i) of the Act which, in imposing the sales tax, stipulates that it is payable by the manufacturer at the time when the goods are delivered to the purchaser. According to counsel for the respondent, subsection 27(3) does not apply in this instance because, among other reasons, the appellant is deemed to be the manufacturer under paragraph 2(1)(e) of the Act.

The respondent also claimed that there is no double taxation, that the transactions between the appellant and its retailer are of a private nature and therefore outside the application of the Act, and that lastly, the appellant cannot invoke its own turpitude.

The Tribunal must agree with the respondent. The appellant did not call any witnesses and did not show why the assessment was allegedly ill-founded. Moreover, there is no evidence of the double taxation alleged by the appellant. Lastly, and contrary to what was claimed, the provisions of the Act on which the assessment is based are clear and unequivocal: the appellant is deemed to be the manufacturer of the products under the definition of "manufacturer" in paragraph 2(1)(e), and the sales tax is payable by the manufacturer at the time of the sale under subparagraph 27(1)(a)(i).

As for subsection 27(3) of the Act, the Tribunal finds that it must be read with subsection 27(2).<sup>4</sup> The latter provision stipulates that the sales tax is not payable in the case of certain transactions between persons subject to the Act, including manufacturers, producers and importers. However, subsection 27(3) re-establishes the applicability of the Act when a third party acquires, from or against any one of these persons, the right to sell the goods. It can be assumed that this provision is intended to cover the disposition of goods by creditors of a producer or manufacturer or, as the respondent maintained, by a receiver in the event of the bankruptcy of one of these persons. The third party that sells these goods would be required to pay the sales tax. This mechanism is therefore in no way related to the transaction that occurred between the appellant and its supplier. For this reason, the Tribunal does not see how the appellant can invoke it as argument against the clear wording of subparagraph 27(1)(a)(i) in order to maintain that only the supplier is responsible for the tax that the appellant states it paid to it. Moreover, this tax was never paid by the appellant according to the Act. Since the transactions between the appellant and its supplier were outside the Act, the statement "all federal taxes included" cannot be used as a valid argument against its application. One can only imagine the consequences with respect to the tax obligations imposed by the Act if each and every taxpayer opposed the Minister private transactions similar to those that occurred in this instance.

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3. Now subsection 50(6), R.S.C., 1985, c. E-15, as amended.

4. Now subsection 50(5), R.S.C., 1985, c. E-15, as amended.

For these reasons, the appeal is dismissed.

John C. Coleman

John C. Coleman  
Presiding Member

Michèle Blouin

Michèle Blouin  
Member

Desmond Hallissey

Desmond Hallissey  
Member