

Ottawa, Tuesday, August 6, 1991

Appeal No. 2981

IN THE MATTER OF an appeal heard on April 30, 1991,
under section 81.19 of the *Excise Tax Act*, R.S.C., 1985,
c. E-15, as amended;

AND IN THE MATTER OF the Decision of the Minister of
National Revenue dated January 8, 1988, with respect to a
notice of objection filed under section 81.15 the *Excise Tax
Act*.

BETWEEN

581204 ONTARIO LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal finds that the appellant has not rebutted the presumption that the Minister of National Revenue properly assessed it, according to the provisions of the *Excise Tax Act*.

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.

Presiding Member

W. Roy Hines

W. Roy Hines

Member

Charles A. Gracey

Charles A. Gracey

Member

Robert J. Martin

Robert J. Martin

Secretary

Appeal No. 2981

581204 ONTARIO LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT J. BERTRAND, Q.C. Presiding Member
W. ROY HINES, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

ISSUE

The issue in this appeal is whether the appellant was properly assessed on its tax liability pursuant to sections 21 and 27 of the *Excise Tax Act*¹ (the Act).

FACTS

This appeal, originally commenced before the Tariff Board, is taken up and continued by the Canadian International Trade Tribunal (the Tribunal) in accordance with section 60 of the *Canadian International Trade Tribunal Act*.²

The appellant, at all material times, imported gasoline and distillate fuel for sale to wholesalers, retailers and perhaps others. On this basis, it was deemed a manufacturer or producer pursuant to paragraph 2(1)(e) of the Act. Between October 1, 1986, and February 28, 1987, the appellant engaged in certain transactions that attracted both federal sales tax and excise tax. By Notice of Assessment dated July 15, 1987, the respondent assessed the appellant in the net sum of \$1,087,954.54 to which the appellant objected. By Notice of Decision dated January 8, 1988, the respondent confirmed the assessment and, on April 5, 1988, 581204 Ontario Limited appealed the assessment.

By letters dated October 17, 1989, and December 6, 1990, counsel for the appellant was asked to submit a brief on behalf of the appellant. After receiving no response, the Tribunal, by letter dated February 6, 1991, requested that counsel give some indication of the appellant's intention to proceed in this appeal. The Tribunal again received no response and by letter sent by courier, counsel was advised that the hearing for the appeal was scheduled for April 30, 1991. By letter dated March 18, 1991, counsel advised the Tribunal that it was no longer acting for the appellant and that he had forwarded the Tribunal's correspondence to the appellant informing it of the scheduled hearing. The appellant did not submit a brief nor was it represented at the hearing. The respondent, however, was represented and submitted a brief to the Tribunal. Accordingly, the Tribunal renders its decision on the basis of the materials before it.

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1. R.S.C., 1970, c. E-13, as amended; now sections 23 and 50, respectively.
 2. R.S.C., 1985, c. 47 (4th Supp.).

CONCLUSION

The appeal is dismissed. The Tribunal finds that the appellant has not rebutted the presumption that the Minister of National Revenue properly assessed it, according to the provisions of the *Excise Tax Act*.

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Presiding Member

W. Roy Hines

W. Roy Hines
Member

Charles A. Gracey

Charles A. Gracey
Member