



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

Ottawa, Wednesday, March 31, 2004

**Appeal No. AP-2003-006**

IN THE MATTER OF an appeal under 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 5, 2003, with respect to a notice  
of objection served under section 81.15 of the *Excise Tax Act*.

**BETWEEN**

**LES PRODUITS DE TABAC TREMBLAY INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Richard Lafontaine

Richard Lafontaine  
Presiding Member

Ellen Fry

Ellen Fry  
Member

Meriel V. M. Bradford

Meriel V. M. Bradford  
Member

Michel P. Granger

Michel P. Granger  
Secretary

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## UNOFFICIAL SUMMARY

### Appeal No. AP-2003-006

**LES PRODUITS DE TABAC TREMBLAY INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal under section 81.19 of the *Excise Tax Act* from a decision of the Minister of National Revenue dated February 5, 2003, confirming the assessment that the latter had issued on May 28, 2001, for unpaid excise taxes. The issue is whether Les Produits de Tabac Tremblay Inc. should collect and remit the excise tax on its sales of cut tobacco to two purchasers, namely, Tabac Orléans and Les Emballages G.A.M.

**HELD:** The appeal is dismissed. The Tribunal is of the view that, pursuant to subsection 23(1) of Part III of the *Excise Tax Act* and section 3 of Schedule II to the *Excise Tax Act*, Les Produits de Tabac Tremblay Inc. should collect and remit the excise tax on its sales of cut tobacco to Tabac Orléans and Les Emballages G.A.M., since there is no exemption in the *Excise Tax Act* allowing Les Produits de Tabac Tremblay Inc. to sell manufactured tobacco tax-exempt to these two companies.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	January 13, 2004
Date of Decision:	March 31, 2004
Tribunal Members:	Richard Lafontaine, Presiding Member Ellen Fry, Member Meriel V. M. Bradford, Member
Counsel for the Tribunal:	Marie-France Dagenais
Clerk of the Tribunal:	Anne Turcotte
Appearances:	Marc-André Leblanc, for the appellant Jean-Robert Noiseux, for the respondent



**Appeal No. AP-2003-006**

**LES PRODUITS DE TABAC TREMBLAY INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member  
ELLEN FRY, Member  
MERIEL V. M. BRADFORD, Member

**REASONS FOR DECISION**

This is an appeal pursuant to section 81.19 of the *Excise Tax Act*<sup>1</sup> from a decision of the Minister of National Revenue (the Minister) dated February 5, 2003, confirming the assessment that the latter had issued on May 28, 2001, for unpaid excise taxes. The Tribunal held a hearing by way of written submissions pursuant to rule 36.1 of the *Canadian International Trade Tribunal Rules*.<sup>2</sup> The issue is whether Les Produits de Tabac Tremblay Inc. (Tabac Tremblay) should collect and remit the excise tax on its sales of cut tobacco to two purchasers, namely, Tabac Orléans and Les Emballages G.A.M. (G.A.M.).

**EVIDENCE**

The Minister and Tabac Tremblay filed an agreed statement of facts, dated October 10, 2003. Among the agreed facts, the following are noted:

- Tabac Tremblay operates a business that manufactures and distributes tobacco products.
- In 2001, Tabac Tremblay was audited by the Minister with regard to the excise tax that it must collect and remit to the Minister on certain goods that it produces or manufactures and delivers to purchasers.
- In 1999 and 2000, Tabac Tremblay dealt with two companies, Tabac Orléans and G.A.M., both of which held excise permits.
- In its business relationship with Tabac Orléans and G.A.M., Tabac Tremblay sold them cut tobacco without either collecting or remitting the tax payable pursuant to the *Excise Tax Act*.

**POSITIONS OF PARTIES**

In their correspondence of October 10, 2003, the Minister and Tabac Tremblay asked the Tribunal for permission to file written submissions in support of the agreed statement of facts. The Tribunal granted the request.

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1. R.S.C. 1985, c. E-15.  
2. S.O.R./91-499.

In its written submissions, Tabac Tremblay maintains that the employees of the Department of National Revenue (Revenue Canada) never informed it that the transfer of the raw material, i.e. the cut tobacco, to purchasers could not be made tax-exempt. Tabac Tremblay believed, on the contrary, as a result of discussions with Revenue Canada, that it could sell its goods tax-exempt to Tabac Orléans and G.A.M., since these companies benefited from the small manufacturers exemption established by the *Small Manufacturers or Producers Exemption Regulations*.<sup>3</sup> Tabac Tremblay submits that Revenue Canada did not know the scope of its *Regulations*, since it incorrectly informed Tabac Tremblay that the said *Regulations* did not apply to these sales of cut tobacco.

Tabac Tremblay also claims that a Revenue Canada employee misled it by informing Tabac Orléans, a purchaser, in writing, that loose leaf tobacco could be purchased exempt from excise tax.

Tabac Tremblay therefore submits that Revenue Canada failed in its duty to provide proper information and had therefore been negligent.

Tabac Tremblay claims that it has always followed Revenue Canada's instructions, that it has always told its employees to co-operate fully with Revenue Canada auditors and that, as a result, it has a good tax record.

Finally, Tabac Tremblay raises the fact that the grounds in support of the initial assessment were varied by the Minister when his notice of decision was issued.

The Minister submits that Tabac Tremblay manufactured in Canada and delivered to a purchaser cut tobacco, a product covered by the definition of "manufactured tobacco" set out in section 6 of the *Excise Act*<sup>4</sup> applicable in this case.

The Minister also submits that, since this product is mentioned in section 3 of Schedule II to the *Excise Tax Act*, Tabac Tremblay should collect and remit the excise tax on its sales of manufactured tobacco to Tabac Orléans and G.A.M., pursuant to subsection 23(1) of the *Excise Tax Act*.

The Minister further submits that no exemption is stipulated in the *Excise Tax Act* that would allow Tabac Tremblay to sell manufactured tobacco to these two purchasers on a tax-exempt basis. He argues that, while Tabac Orléans and G.A.M. are small manufacturers, these companies cannot benefit from this exemption, since the *Regulations* do not apply to transactions resulting in the payment of excise tax. While the Minister acknowledges that a certain practice has made it possible to exempt some small manufacturers from payment of the excise tax in some circumstances, he argues that this was an exemption applicable to sales from small manufacturers to third parties, and not to their purchases of raw materials such as those concerned in this case.

In response to Tabac Tremblay's allegation that Revenue Canada had provided it with incorrect information, which he expressly denies, the Minister submits that, even if his representatives had provided incorrect information to Tabac Tremblay concerning the application and interpretation of the *Excise Tax Act*, this allegation cannot be taken into consideration, since the Crown cannot be bound by a

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3. S.O.R./82-498 [*Regulations*].

4. R.S.C. 1985, c. E-14.

statement regarding an interpretation of the law by one of its employees. The Minister referred to the decisions in *Panar v. Canada*<sup>5</sup> and *M.N.R. v. Inland Industries Limited*<sup>6</sup> to support his claim.

As for the grounds of the initial assessment, the Minister acknowledges that they were varied, but submits that subsection 81.15(4) of the *Excise Tax Act* authorizes him to vary the grounds of an assessment when analysing the notice of objection. According to the Minister, the case law<sup>7</sup> is clear in this regard.

Finally, the Minister notes Tabac Tremblay's contentions that it has an excellent tax record and has always acted in good faith, but submits that the Tribunal cannot apply concepts of equity to the resolution of this dispute.

## DECISION

The issue is whether Tabac Tremblay should remit the excise tax on its sales of cut tobacco.

The relevant provisions of the *Excise Tax Act* stipulate, in part, as follows:

23. (1) Subject to subsections (6) to (8.3) and 23.2(6), whenever goods mentioned in Schedules I and II are imported into Canada or manufactured or produced in Canada and delivered to a purchaser thereof, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this or any other Act or law, an excise tax in respect of those goods at the applicable rate set out in the applicable section in whichever of those Schedules is applicable, computed, where that rate is specified as a percentage, on the duty paid value or the sale price, as the case may be.

### SCHEDULE II

#### TAX RATES ON TOBACCO PRODUCTS

3. Manufactured tobacco other than cigarettes and tobacco sticks:

(e) \$10.648 per kilogram, in any other case.

2. (1) . . .

“manufactured tobacco” has the same meaning as in section 6 of the *Excise Act*.

Section 6 of the *Excise Act* defines “manufactured tobacco” as follows:

“manufactured tobacco” means every article, other than cigars, made by a tobacco manufacturer from raw leaf tobacco by any process whatever, and includes cigarettes, tobacco sticks and snuff.

The Tribunal is of the view that, pursuant to subsection 23(1) of Part III of the *Excise Tax Act* and section 3 of Schedule II to the *Excise Tax Act*, Tabac Tremblay should collect and remit the excise tax on its sales of cut tobacco to Tabac Orléans and G.A.M.

Section 2 of the *Excise Tax Act*, which refers to section 6 of the *Excise Act*, defines the expression “manufactured tobacco” as every article made by a tobacco manufacturer from raw leaf tobacco by any process whatever. Tabac Tremblay acknowledges having made cut tobacco. In light of the foregoing and of the case as a whole, and in particular of the fact that the parties do not dispute this aspect, the Tribunal is of

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5. [2001] T.C.J. No. 233 (T.C.C.).

6. [1974] S.C.R. 514.

7. *Her Majesty the Queen v. Anchor Pointe Energy Ltd.*, 2003 FCA 294 [*Anchor Pointe*].

the view that the cut tobacco sold by Tabac Tremblay to Tabac Orléans and G.A.M. is manufactured tobacco within the meaning of the *Excise Tax Act*.

The Tribunal is of the view that no exemption in the *Excise Tax Act* allowed Tabac Tremblay to sell manufactured tobacco exempt from excise tax to the two above-mentioned companies. Indeed, subsection 23(1) of the *Excise Tax Act* states that an excise tax shall be imposed, levied and collected on goods mentioned in Schedules I and II, notably manufactured tobacco, that are manufactured and delivered to their purchaser. Subsections 23(8.1), (8.2) and (8.3) of the *Excise Tax Act* state that the tax stipulated in subsection 23(1) is not payable in the case of certain specific transactions involving manufactured tobacco. The Tribunal is of the view that none of these situations applies to the transactions in this case. Moreover, the Tribunal wishes to point out that the *Regulations* do not apply in this case. This exemption applies first of all to sales made by small manufacturers or producers and not to their purchases. Furthermore, this exemption does not apply in cases where the excise tax is payable. As for the excise permit that Tabac Orléans and G.A.M. hold in this case, it does not allow them to purchase goods exempt from excise tax.

Tabac Tremblay raised the fact that the grounds for the initial assessment were varied when the notice of objection was analysed. In that regard, the Tribunal is of the view that, in the circumstances, the Minister could vary the grounds in support of his initial claim. To support this conclusion, the Tribunal relies on the decision in *Anchor Pointe* cited by the Minister. Moreover, in an earlier decision, *GFT Mode Canada Inc. v. Deputy M.N.R.*,<sup>8</sup> the Tribunal also found that the respondent could submit other grounds to support his assessment in addition to those that had already been included in his initial re-determination of the assessment.

As for Tabac Tremblay's allegation that the Minister's employees did not provide it with the proper information, the Tribunal, in light of the evidence on the record, is not convinced of this and, therefore, does not deem it necessary to address this issue further.

In light of the foregoing, the Tribunal is of the view that the Minister's assessment is well founded.

The appeal is therefore dismissed.

Richard Lafontaine  
Richard Lafontaine  
Presiding Member

Ellen Fry  
Ellen Fry  
Member

Meriel V. M. Bradford  
Meriel V. M. Bradford  
Member

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8. (18 May 2000), AP-96-046 and AP-96-074 (CITT).