



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2004-015

Magnum Transport Inc.

v.

Minister of National Revenue

*Decision and reasons issued
Friday, January 28, 2005*

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IN THE MATTER OF an appeal heard on January 13, 2005, 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 May 14, 2004, with respect to a notice of objection under section 81.17 of the *Excise Tax Act*.

BETWEEN

MAGNUM TRANSPORT INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

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

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 13, 2005

Tribunal Members: Pierre Gosselin, Presiding Member
James A. Ogilvy, Member
Meriel V. M. Bradford, Member

Counsel for the Tribunal: Nick Covelli

Clerk of the Tribunal: Margaret Fisher

Appearances: Anthony Craig, for the appellant
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REASONS FOR DECISION

1. This is an appeal under section 81.19 of the *Excise Tax Act*¹ from a decision of the Minister of National Revenue (the Minister), dated May 14, 2004, under section 81.17 of the *Act*, allowing in part a refund claim by Magnum Transport Inc. (Magnum) under section 68.1 of the *Act*.
2. The issue in this appeal is whether Magnum is entitled to a refund of excise tax imposed on the purchase of diesel fuel exported from Canada by owner-operators working under contract for Magnum.
3. Section 68.1 of the *Act* provides in part 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.
4. Magnum is involved in the freight transportation business. It contracts persons who own and operate trucks, i.e. “owner-operators”, to transport freight.
5. On March 23, 1992, Magnum applied for a refund of excise tax with respect to diesel fuel exported to the United States by owner-operators working for it under contract between January 1, 1990, and December 31, 1991.
6. On May 21, 1992, the Minister denied Magnum’s application on the ground that the diesel fuel purchased in Canada for use in the fuel tanks of trucks crossing the border into the United States was not “exported” in accordance with section 68.1 of the *Act*.
7. On May 21, 1992, Magnum filed a notice of objection. On September 9, 1992, the Minister agreed to hold the matter in abeyance pending the Federal Court’s decision in *Penner International Inc. v. Canada*², where the plaintiffs claimed that the removal of diesel fuel in the operation of their trucks constituted an “export” from Canada. The plaintiffs were ultimately successful before the Federal Court of Appeal.³
8. On May 14, 2004, the Minister issued a partial refund of the excise tax, withholding a portion on the ground that the amount claimed for the period between January 1 and March 31, 1990, was time-barred by statute. The Minister further held that Magnum could not claim the remaining amount of excise tax in respect of fuel exported by the owner-operators under contract with it. Magnum appealed this part of the Minister’s decision to the Tribunal.
9. The parties did not produce any testimony at the hearing. The Tribunal proceeded by way of oral argument by counsel appearing for the parties.

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

2. [2001] F.C.J. No. 1367 (F.C.).

3. [2003] 2 F.C. 581 (C.A.) [*Penner*].

ARGUMENT

10. Magnum did not dispute the fact that the diesel fuel in question was purchased by the owner-operators and that it therefore did not pay the excise tax. Nor did Magnum dispute the fact that the diesel fuel was exported by the owner-operators rather than by Magnum.

11. Magnum argued that it is entitled to a refund of the excise tax on behalf of the owner-operators because they worked exclusively for it, it supplied them with licence plates, and it filed all their fuel tax claims. The Tribunal notes that no evidence was submitted to support these assertions.

12. Magnum also argued that, since the Minister had placed its claim in abeyance without advising it that it could not claim on behalf of the owner-operators, it would now be unfair to deny the refund claim because, if the appeal were dismissed, the owner-operators would be statute-barred from submitting refund claims themselves.

13. According to Magnum, it would forward any refund to the owner-operators who are still under contract with it. It added that no decision had been made about what it would do with the remainder of the refund.

14. The Minister argued that section 68.1 of the *Act* provides that only the person who paid for the goods and exported them from Canada is entitled to a refund and that Magnum did neither. He also stated that the claim had initially been denied on the ground that the fuel did not constitute an export and that, when the claim was placed in abeyance, Magnum was to await the decision by the Federal Court on that issue. The Minister argued that, once the matter had been initially denied on this ground, he was under no obligation to advise on the merits of the claim. He also submitted that, by holding the claim in abeyance, only Magnum, not the owner-operators, retained its right.

15. The Minister also argued that if a “third party”, such as Magnum, were entitled to a refund on behalf of owner-operators, he could be exposed to duplicate refund claims.

16. In the alternative, the Minister argued that Magnum could not keep any part of the refund belonging to owner-operators who are no longer under contract with it.

17. The Minister added that section 67 of the *Financial Administration Act*⁴ precludes the assignment of Crown debt.

DECISION

18. In the Tribunal’s view, subsection 68.1(1) of the *Act* clearly indicates that the person who may apply for a refund of the excise tax imposed on the purchase of goods must have exported those goods from Canada. As mentioned, Magnum did not dispute the fact that the persons who exported the diesel fuel from Canada were the owner-operators.

19. Further, the Tribunal notes that, in *Penner*, the plaintiffs who succeeded in obtaining a refund of the excise tax had purchased the goods that were exported from Canada and paid the excise tax on them. Magnum did not dispute the fact that the owner-operators purchased the goods and paid the excise tax. Thus, Magnum is not in a position analogous to that of the plaintiffs in *Penner*.

4. R.S.C. 1985, c. F-11.

20. In the Tribunal's view, the contractual relationship between the owner-operators and Magnum does not change the fact that the owner-operators paid the excise tax and exported the goods from Canada. Nor is there any evidence that Magnum was acting as agent for the owner-operators.
21. For the above reasons, the Tribunal finds that Magnum is not entitled to a refund of the excise tax.
22. Therefore, the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

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