



Ottawa, Tuesday, October 13, 1992

Appeal No. AP-89-229

IN THE MATTER OF an appeal heard on June 23, 1992, and continued on September 10, 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 July 14, 1989, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

LABORATOIRES DELON LTÉE

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

John C. Coleman

John C. Coleman
Member

Desmond Hallissey

Desmond Hallissey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-89-229

LABORATOIRES DELON LTÉE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant objected to the part of the assessment relating to the use of the established value. It claimed, among other things, that one of its competitors had been authorized to use an established value, which use was denied to the appellant by the Department of National Revenue.

HELD: *The appeal is dismissed. The appellant did not file any brief with the Tribunal and did not appear at the hearing set for September 10, 1992. As the Tribunal has previously stated, when a person intends to object to an assessment, he or she cannot simply present arguments based on facts different from those on which the assessment is based. That person must prove the facts on which the objection is based and show how the assessment is incorrect having regard to the Excise Tax Act. There is nothing in the documentary evidence on file to allow the Tribunal to find in favour of the appellant.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: September 10, 1992
Date of Decision: October 13, 1992*

*Tribunal Members: Arthur B. Trudeau, Presiding Member
John C. Coleman, Member
Desmond Hallissey, Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Dyna Côté

Appearance: Stephane Lilkoff, for the respondent

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LABORATOIRES DELON LTÉE

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and

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TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
JOHN C. COLEMAN, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal filed under section 81.19 of the *Excise Tax Act*¹ (the Act) with respect to a decision of the Minister of National Revenue (the Minister) confirming an assessment.

The appellant is a licensed manufacturer of cosmetics under the Act. On August 12, 1987, an assessment was made against the appellant in the amount of \$17,671.81, including tax, penalty and interest, for the period between March 1, 1984, and January 31, 1987. The assessment mentions unpaid taxes relating to (1) the incorrect application of the value established for wholesalers on the sale of cosmetics and (2) tax deductions for transportation costs relating to exempt sales.

On September 14, 1987, the appellant objected to the part of the assessment relating to the use of the established value. One of its claims was that one of its competitors had used an established value, which use was denied to the appellant by the Department of National Revenue. On July 14, 1989, the appellant's objection was dismissed on the grounds that cosmetic wholesalers are deemed to be manufacturers under paragraph 2(1)(d) of the Act. According to the Minister, the price established by the appellant for wholesalers could therefore not be used to compute the tax on sales made by the appellant to retailers at higher prices. On October 5, 1989, Laboratoires Delon Ltée appealed the assessment to the Tribunal.

The appellant did not present any other evidence before the Tribunal than that presented in support of its notice of objection. In fact, at the outset of the hearing on June 23, 1992, the Tribunal granted the appellant's request for an adjournment. The appellant was not represented by counsel and requested more time to prepare its case, claiming that it had lost required information. The Tribunal asked the appellant to submit its brief no later than 30 days prior to the hearing that was set, by agreement, for September 10, 1992.

1. R.S.C. 1985, c. E-15, as amended.

The appellant did not file any brief with the Tribunal and did not appear at the hearing set for September 10, 1992. As the Tribunal stated previously in *A.S. 4 Steel Industries Ltd. v. The Minister of National Revenue*,² when a person intends to object to an assessment, he or she cannot simply present arguments based on facts different from those on which the assessment is based. That person must prove the facts on which the objection is based and show how the assessment is incorrect having regard to the Act. There is nothing in the documentary evidence on file to allow the Tribunal to find in favour of the appellant.

For these reasons, the appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

John C. Coleman
John C. Coleman
Member

Desmond Hallissey
Desmond Hallissey
Member

2. Canadian International Trade Tribunal, Appeal No. AP-89-132, June 11, 1992.