CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, March 16, 1992

Appeal No. AP-90-017

IN THE MATTER OF an appeal heard on December 3, 1991, 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 March 27, 1990, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act.*

BETWEEN

SARTO PLANTE INC. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Robert J. Martin
Robert J. Martin
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-90-017

SARTO PLANTE INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

***HELD**: The appeal is dismissed. The appellant did not prove the validity of its objection to the assessment.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*December 3, 1991*
Date of Decision:	*March 16, 1992*
Tribunal Members:	*Arthur B. Trudeau, Presiding Member* *Robert C. Coates, Q.C., Member* *Sidney A. Fraleigh, Member*
Counsel for the Tribunal:	*Robert Desjardins*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Sarto Plante, for the appellant* *Alain Lafontaine, for the respondent*

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Appeal No. AP-90-017

SARTO PLANTE INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
SIDNEY A. FRALEIGH, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act* (the Act).[1]

The appellant, who has been licensed as a manufacturer since January 21, 1974, manufactures and resells garage doors. After visiting the appellant on November 18, 1988, the respondent performed an audit of its books. As a result of this audit, a notice of assessment dated February 10, 1989, was sent to the appellant requesting payment of $26,331.75 in unpaid taxes, interest and penalties. The notice covered the period from June 1, 1985, to November 30, 1988. The respondent received a notice of objection on March 21, 1989. On March 27, 1990, a notice of decision was issued by the respondent confirming the notice of assessment.

The central issue in this case is whether the notice of assessment issued by the respondent is founded in fact and law. In its brief to the Tribunal, the appellant claimed that it would demonstrate, during the hearing, the errors which were allegedly made by the respondent's employee during the audit, subsequently leading to the erroneous assessment.

During the hearing, Mr. Sarto Plante alleged that Mrs. Claudine Mercier, the auditor for the Department of National Revenue, did not consult either the appellant's accounting records or its purchase invoices. The essence of his testimony was that the auditor had not done her work properly. While acknowledging that his company had made an error in not remitting the tax at the correct rates, Mr. Plante stated that the Department of National Revenue must also accept responsibility for this fact because it did not inform the appellant of the change in rates.

The respondent called Mrs. Mercier as witness. After giving the reasons leading to the tax audit, she explained the accounting and audit methods used to arrive at the assessment. In her view, the appellant's records were not adequate to determine whether the goods purchased under tax exemption conditions from two major suppliers were intended for resale or manufacturing.

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

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Consequently, in order to determine the tax disposition of these goods, she developed an audit method whereby all the goods in question were taxed as though they were solely for resale. From the amount of tax thus calculated was subtracted the total amount of taxes already remitted by the appellant on goods used in the manufacture of garage doors. By subtracting this amount, double taxation would be avoided as the goods used had already been taxed on the cost price. The documents filed in evidence indicated that this approach was applied systematically to all relevant transactions during the period of audit to calculate the amount of tax owing.

At this juncture, the Tribunal wishes to mention that the burden of proof in any appeal in tax matters before the Tribunal lies with the appellant. Therefore, unless the appellant is able to show through evidence that the allegations of errors have substance, there will be no grounds for allowing the appeal.

While taking into account the fact that the accounting and audit methods used by the auditor were indeed complex and easily confusing, the Tribunal can find no systematic fault with the methods or calculations used to arrive at the assessment in the circumstances of this case.

Having examined all the evidence and considered the arguments of both parties, the Tribunal concludes that the appeal must be dismissed because the appellant did not meet the burden of proof requirements. It is not sufficient merely to claim that there are shortcomings or errors in an audit. The nature of such errors or shortcomings must be explained and evidence provided in order to clearly establish how they affect the validity of the assessment. Unfortunately, that was not done in this case.

Finally, the Tribunal notes that it is the responsibility of the appellant to take the necessary measures to ensure that its tax obligations are met and, consequently, that it must be aware of changes to tax rates as they occur. The fact that the tax rates listed on the official tax remittance forms, at the relevant time, were different than those used in calculating and remitting tax should have given the appellant the indication that rates had indeed changed since it became a licensed manufacturer in 1974.

For the foregoing reasons, the appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member