

Ottawa, Thursday, February 6, 1992

**Appeal No. AP-90-112**

IN THE MATTER OF an appeal heard on October 29, 1991, 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 August 27, 1990, with respect to a notice of objection served under section 81.15 the *Excise Tax Act*.

**BETWEEN**

**NERCO CON MINE, LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed. The Tribunal orders that the matter be returned to the respondent in order to conduct a new audit regarding the appellant's refund claim.

Michèle Blouin  
Michèle Blouin  
Presiding Member

W. Roy Hines  
W. Roy Hines  
Member

Charles A. Gracey  
Charles A. Gracey  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

*UNOFFICIAL SUMMARY*

**Appeal No. AP-90-112**

**NERCO CON MINE, LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

***HELD:*** *The appeal is allowed. The matter is returned to the respondent.*

*Place of Hearing:* Ottawa, Ontario  
*Date of Hearing:* October 29, 1991  
*Date of Decision:* February 6, 1992

*Tribunal Members:* Michèle Blouin, Presiding Member  
W. Roy Hines, Member  
Charles A. Gracey, Member

*Counsel for the Tribunal:* Robert Desjardins

*Clerk of the Tribunal:* Janet Rumball

*Appearances:* Kent N. Richardson, for the appellant  
Linda J. Wall, for the respondent

**Appeal No. AP-90-112**

**NERCO CON MINE LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member  
W. ROY HINES, Member  
CHARLES A. GRACEY, Member

**REASONS FOR DECISION**

This is an appeal pursuant to section 81.19 of the *Excise Tax Act* (the Act) from a decision of the respondent dated August 27, 1990. The decision disallowed the appellant's objection and confirmed the assessment contained in the Notice of Assessment dated September 26, 1989.

The appellant operates a gold mine in Yellowknife, Northwest Territories. It applied for a fuel tax rebate, pursuant to section 69 of the Act, in respect of diesel fuel used in the operation of machinery and vehicles in connection with activities carried out on its mine site.

The issue is whether the activities in which the fuel was used fall within the definition of "mining" in subsection 69(1) of the Act so as to entitle the appellant to the rebate sought.

Having heard the evidence and read the exhibits produced, particularly Exhibit A-1, the Tribunal orders that the matter be returned to the respondent in order to conduct a new audit regarding the appellant's refund claim.

The appeal is allowed. Accordingly, the matter is returned to the respondent.

Michèle Blouin  
Michèle Blouin  
Presiding Member

W. Roy Hines  
W. Roy Hines  
Member

Charles A. Gracey  
Charles A. Gracey  
Member