



Ottawa, Monday, January 13, 1992

**Appeal No. AP-91-062**

IN THE MATTER OF an appeal heard on  
November 18, 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 March 25, 1991, with respect to a  
notice of objection served under section 81.15 of the  
*Excise Tax Act*.

**BETWEEN**

**ATHANS CHEMICALS**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Kathleen E. Macmillan

Kathleen E. Macmillan

Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Member

Arthur B. Trudeau

Arthur B. Trudeau

Member

Robert J. Martin

Robert J. Martin

Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-91-062**

**ATHANS CHEMICALS**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue is whether the appellant is liable for excise tax on sales of chemical cleaners to two of its customers.*

**HELD:** *The appeal is dismissed. There is no provision in the Excise Tax Act or its regulations that would exempt the transactions at issue from the imposition of sales tax.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: November 18, 1991*  
*Date of Decision: January 13, 1992*

*Tribunal Members: Kathleen E. Macmillan, Presiding Member*  
*Robert C. Coates, Q.C., Member*  
*Arthur B. Trudeau, Member*

*Counsel for the Tribunal: Brenda C. Swick-Martin*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Alexander Athans, Ph.D. Chem., for the appellant*  
*Linda J. Wall, for the respondent*

**Appeal No. AP-91-062**

**ATHANS CHEMICALS**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member  
ROBERT C. COATES, Q.C., Member  
ARTHUR B. TRUDEAU, Member

**REASONS FOR DECISION**

This is an appeal pursuant to section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act). Athans Chemicals appeals a decision of the Minister of National Revenue concerning an assessment of sales tax, interest and penalty for the period January 1, 1987, to June 30, 1990.

The appellant is a manufacturer of specialty cleaning chemicals licensed under the Act. During the period in question, the appellant failed to collect the sales tax from two of its customers on the basis that they were small manufacturers and were therefore not required to pay the tax. The appellant relied on the special edition of the National Revenue Bulletin entitled Excise News, published in December 1980, as authority for not collecting the sales tax from these customers.

The customers in question purchased chemicals in bulk form, diluted, repackaged and resold them. The appellant's sales to these accounts were less than \$20,000 each per year. The appellant believed that the total annual sales of each customer were less than \$50,000 and that they were not licensed manufacturers under the Act.

Subsection 50(1) of the Act provides that all manufacturers must pay tax on goods they produce or manufacture in Canada. The Small Manufacturers or Producers Exemption Regulations<sup>2</sup> (the Regulation) provide that small manufacturers with annual sales not exceeding \$50,000 are exempt from the payment of tax on goods manufactured or produced by them. However, the exemption does not extend to goods purchased by such small manufacturers.

Another exemption from tax exists under paragraph 50(5)(a) of the Act for "partly manufactured goods" sold from one licensed manufacturer to another.

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1. R.S.C., 1985, c. E-15, as amended.  
2. SOR/82-498, as amended.

Although unfortunate for the appellant, the Act and Regulations explicitly require that it collect the sales tax on sales to customers, large or small. The only relevant exception is in the case of "partly manufactured goods" sold to another licensed manufacturer. As the appellant did not produce evidence that the sales to the two accounts at issue were to licensed manufacturers and that, therefore, an exemption could be claimed under paragraph 50(5)(a) of the Act, the Tribunal must dismiss the appeal.

Kathleen E. Macmillan

Kathleen E. Macmillan  
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member