CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, September 8, 1993

Appeal Nos. AP-91-028 and AP-91-119

IN THE MATTER OF two appeals heard on February 18, 1993, under sections 81.19 and 81.22 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 30, 1990, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act;*

AND IN THE MATTER OF a determination of the Minister of National Revenue dated July 30, 1990, and amended August 17, 1990, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

PENNER DOORS & HARDWARE LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal Nos. AP-91-028 and AP-91-119

PENNER DOORS & HARDWARE LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

Appeal No. AP-91-028 deals with a determination under the Excise Tax Act which was appealed directly to the Tribunal, as the Minister of National Revenue did not make a decision within 180 days after the appellant served a notice of objection to the determination that denied its refund claim of sales tax. Appeal No. AP-91-119 relates to a notice of assessment dated February 23, 1990, that was confirmed by a notice of decision of the Minister of National Revenue dated March 30, 1990 On July 8, 1991, the appellant was granted an extension of time to August 26, 1991, to appeal the assessment to the Tribunal.

HELD: *The appeals are dismissed. The appellant, which has the onus of demonstrating that the assessment is incorrect and that it is entitled to a refund of sales tax, has failed to do so.*

Place of Hearing:	*Winnipeg, Manitoba*
Date of Hearing:	*February 18, 1993*
Date of Decision:	*September 8, 1993*
Tribunal Members:	*Michèle Blouin, Presiding Member* *Desmond Hallissey, Member* *Lise Bergeron, Member*
Counsel for the Tribunal:	*Gilles B. Legault*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*E.R. Reid, for the appellant* *F.B. Woyiwada, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal Nos. AP-91-028 and AP-91-119

PENNER DOORS & HARDWARE LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
DESMOND HALLISSEY, Member
LISE BERGERON, Member

REASONS FOR DECISION

These are two appeals under sections 81.19 and 81.22 of the *Excise Tax Act*[1] (the Act) from an assessment and a determination of the Minister of National Revenue (the Minister).

Appeal No. AP-91-028 deals with a determination which was appealed directly to the Tribunal, as the Minister did not make a decision within 180 days after the appellant served a notice of objection to the determination that denied its refund claim of sales tax. Appeal No. AP-91-119 relates to a notice of assessment dated February 23, 1990, that was confirmed by a notice of decision of the Minister dated March 30, 1990. On July 8, 1991, the Tribunal granted the appellant an extension of time to August 26, 1991, to appeal from the assessment.[2]

On February 18, 1993, the Tribunal began the hearing of those appeals; however, the hearing was adjourned because of the great difficulty for the respondent, as well as for the Tribunal, to identify the facts of the case and understand the appellant's arguments. Indeed, the only documents that could be considered as briefs were two notices of appeal filed on behalf of the appellant by Mr. E.R. Reid, a director and tax consultant with Revenue West. In fact, those notices are two discursive letters of an abbreviated form, that are laconic as to the circumstances of the sales at issue, as well as sketchy as to the arguments made with respect to the determination and the assessment.

Because of the insufficiency of the appellant's briefs, the Tribunal adjourned the hearing and requested that the appellant provide more detailed briefs with respect to the facts of the cases and the points at issue in order to enable the parties, as well as the Tribunal, to proceed with both appeals. Consequently, on March 1, 1993, the Tribunal, under rules 5, 25, 26, 29 and 34 of the *Canadian International Trade Tribunal Rules*,[3] directed the parties as follows:

1. R.S.C. 1985, c. E-15.
2. Extension of Time, EP-91-010, July 8, 1991.
3. SOR/91-499, August 14, 1991, Canada Gazette Part II, Vol. 125, No. 18 at 2912.

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1. *The appellant must file a brief within 60 days from February 18, 1993, in which case, the respondent will have up to 60 days to file a supplementary response.*
2. *The brief must be signed by the appellant's president and must contain the information stated in rule 34 of the Canadian International Trade Tribunal Rules.*
3. *Upon failure by the appellant to comply with the Tribunal's order, the Tribunal will dispose of the matter on the basis of the written documents before it, under rules 5, 25 and 29.*
4. *If necessary, the Secretary will fix a date to continue the hearing.*

As of this date, the appellant has not filed any other document nor has it requested any further delay to comply with the Tribunal's order. The Tribunal has thus proceeded with those appeals on the basis of the written documents on file.

With respect to the assessment under appeal, the Tribunal points out that in *A.S. 4 Steel Industries Ltd. v. The Minister of National Revenue*,[4] the Tribunal referred to the Supreme Court of Canada decision in *Roderick W. S. Johnston v. The Minister of National Revenue*[5] and concluded that an appellant must prove the facts on which it intends to rely:

> *In the Johnston case, the Supreme Court had to deal with an appeal under the Income War Tax Act,[6] a procedure very similar to the appeal procedure governing this case. In determining whether the appellant had the onus to demonstrate that the facts on which the assessment was based were wrong, the Court stated:*
>
> > *Notwithstanding that it is spoken of in section 63(2) as an action ready for trial or hearing, the proceeding is an appeal from the taxation; and since the taxation is on the basis of certain facts and certain provisions of law either those facts or the application of the law is challenged. Every such fact found or assumed by the assessor or the Minister must then be accepted as it was dealt with by these persons unless questioned by the appellant. If the taxpayer here intended to contest the fact that he supported his wife within the meaning of the Rules mentioned he should have raised that issue in his pleading, and the burden would have rested on him as on any appellant to show that the conclusion below was not warranted. For that purpose he might bring evidence before the Court notwithstanding that it had not been placed before the assessor or the Minister, but the onus was his to demolish the basic fact on which the taxation rested.*
>
> (Emphasis added)

These decisions clearly establish that the appellant has the onus of demonstrating to the Tribunal that the assessment is incorrect. There is absolutely nothing in this case, however, that explains how the assessment is wrong. The Tribunal notes, in this regard, that the appellant was granted an extension of time to appeal from the assessment, that the Tribunal even adjourned the hearing in order to provide the appellant an opportunity to present its case and that, nonetheless, the appellant has not provided any evidence to sustain its position.

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4. Canadian International Trade Tribunal, Appeal No. AP-89-132, June 11, 1992.
5. [1948] S.C.R. 486.
6. R.S.C., 1927, c. 97.

As to the refund claim of sales tax, the burden was also on the appellant to demonstrate that it is entitled to such refund.[7] In this case, an amended notice of determination dated August 17, 1990, indicates that part of the refund claim was denied because of a statutory two-year time limitation. Moreover, the amended notice of determination stated that the Department of National Revenue (Revenue Canada) took notice of the appellant's claims that it was a small manufacturer and that the appellant's case was forwarded for review. However, a document on file indicates that the appellant has not substantiated its claim about its qualification as a small manufacturer. The appellant had ample time and opportunity to provide evidence in this regard to either Revenue Canada or the Tribunal. It failed to do so and, consequently, its appeal from the determination must also be dismissed.

In light of the foregoing, the Tribunal has no choice but to dismiss both appeals.

Michèle Blouin
Michèle Blouin
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

Lise Bergeron
Lise Bergeron
Member

7. *The Assessment Commissioner of The Corporation of the Village of Stouffville v. The Mennonite Home Association of York County and The Corporation of the Village of Stouffville*, [1973] S.C.R. 189 at 194.