



Ottawa, Thursday, September 3, 1992

Appeal No. AP-91-056

IN THE MATTER OF an appeal heard on July 31, 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 March 28, 1991, with respect to a  
notice of objection served under section 81.15 of the  
*Excise Tax Act*.

**BETWEEN**

**OERUS CORPORATION LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Presiding Member

Charles A. Gracey  
Charles A. Gracey  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

*UNOFFICIAL SUMMARY*

**Appeal No. AP-91-056**

**OERUS CORPORATION LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue in this appeal is whether the appellant was properly assessed for interest and penalty on outstanding taxes for the years 1987 and 1988.*

***HELD:** The appeal is dismissed. The Tribunal's jurisdiction does not extend to varying or vacating any interest or penalty that has been imposed on default in paying taxes.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: July 31, 1992*  
*Date of Decision: September 3, 1992*

*Tribunal Members: Sidney A. Fraleigh, Presiding Member*  
*Charles A. Gracey, Member*  
*Desmond Hallissey, Member*

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Ian Donahoe and Chantal Quesnel, for the respondent*

**Appeal No. AP-91-056**

**OERUS CORPORATION LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member  
CHARLES A. GRACEY, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

The issue in this appeal is whether the appellant was properly assessed for interest and penalty on outstanding taxes for the years 1987 and 1988 under the *Excise Tax Act*<sup>1</sup> (the Act).

Oerus Corporation Ltd. (Oerus) manufactures and repairs computer memory systems for both domestic use and export. The appellant did not attend the hearing, but a brief was filed on its behalf. The facts as recorded in the appellant's brief were significantly different from those recounted by Ms. Chantal Quesnel, an officer from the Department of National Revenue (Revenue Canada) who appeared at the hearing.

In its brief, the appellant claimed that it based its initial sales tax calculations and remittances to Revenue Canada on the instructions of a Revenue Canada officer from Toronto. It was later discovered that, due to foreign sales and sales to exempt users, an overpayment of taxes had been made. By the appellant's calculations, it had amounted to \$13,601.05 by March of 1987. In response, a refund claim was filed and a meeting with a Revenue Canada officer from Toronto was arranged. At that time, the parties agreed to certain arrangements. In its brief, the appellant asserts that, because its past tax payments were in dispute, an audit was requested.

Soon after, an audit was conducted and it was determined that an overpayment much less than that calculated by the appellant had been made. An objection to that determination was served, at which time a further audit of the appellant was requested. Fourteen months later, a second audit was conducted, which determined that the first audit was in error. However, during the 14-month period, Oerus, though it submitted the necessary monthly tax returns, had not submitted monies to Revenue Canada. Subsequent to the second audit, Oerus repaid Revenue Canada the outstanding taxes. It would appear, however, that it refused to pay the outstanding interest and penalty that had accrued on the outstanding taxes.

According to Ms. Quesnel, when the appellant first started in business, it requested and was granted several meetings with the Regional Unit Audit Manager of Revenue Canada at which time they came to certain agreements. The Unit Manager also agreed to send an auditor to the appellant's place of business to conduct an audit and to confirm how taxes were to be remitted. The auditor apparently gave information to the appellant which contradicted

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

everything that had previously been established at the earlier meetings. Mr. Abe Gamus, President of Oerus, objected to the audit and requested that a second audit be conducted. Fourteen months later, the second audit was conducted at which time it was confirmed that the first audit was in error. Recalculations were made and all outstanding taxes were paid. However, because of the misinformation, the appellant had to file amended returns from his monthly remittances to Revenue Canada. As a consequence, Revenue Canada assessed penalty and interest on the amended returns. Interest and penalty accrued on the difference between the taxes that should have been remitted and those that were remitted.

In its brief, the appellant claimed that since Revenue Canada had provided it with incorrect and/or misleading information causing it to incorrectly determine and remit its federal sales tax, the penalty and interest should be cancelled. As the appellant made overpayments of federal sales tax based on alleged misinformation, it demanded interest for the outstanding amounts at the then current bank rate. The appellant further claimed that since it made voluntary disclosure and requested an audit, the outstanding penalty should be discarded. It was further argued that because of the unequal tax treatment between foreign imports and domestically manufactured goods, based on the *Canadian Bill of Rights*, all federal sales tax remitted by the appellant should be returned with interest.

Counsel for the respondent noted that, to the best of his knowledge, the appellant is insolvent and not doing business. He acknowledged, however, that the appellant underpaid its taxes, in part, because of the misinformation given to him by a Revenue Canada officer. As a result, counsel gave an undertaking that, in respect of this matter, the Department of Justice would not, on behalf of Revenue Canada, again seek to collect the outstanding interest and penalty from the appellant.

After reviewing the files and considering the oral arguments of counsel for the respondent, the Tribunal dismisses the appeal. As stated in an earlier decision, "It is not within the Tribunal's jurisdiction to fulfil the appellant's request to cancel or reduce the penalty."<sup>2</sup> Nor does the Tribunal's jurisdiction extend to varying or vacating any interest that has been imposed on default in paying taxes. The Tribunal's powers on the disposition of an appeal are not as extensive as those of the Federal Court - Trial Division that "may order payment or repayment of any tax, penalty, interest, sum or costs."<sup>3</sup> The Tribunal notes, however, the undertaking of counsel for the respondent not to pursue this matter.

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Presiding Member

Charles A. Gracey  
Charles A. Gracey  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

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2. *Les Presses Lithographiques Inc. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. 2997, June 26, 1989.

3. Subsection 81.31(2) of the Act.