CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, September 8, 1993

Appeal No. AP-91-135

IN THE MATTER OF an appeal heard on February 17, 1993, under section 81.22 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF a notice of objection to a notice of assessment served under section 81.15 of the *Excise Tax Act*.

BETWEEN

IMPERIAL CABINET (1980) CO. LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Lise Bergeron
Lise Bergeron
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-91-135

IMPERIAL CABINET (1980) CO. LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The issue in this appeal is whether the Minister of National Revenue (the Minister) should have applied a credit when the appellant was assessed under the Excise Tax Act.

HELD: *The appeal is dismissed. Subsection 74(1) of the Excise Tax Act clearly states that a taxpayer that wishes to deduct any amount from its monthly tax return must request the Minister's authorization at the time of its refund application and that the Minister has discretion to authorize such practice. Furthermore, subsection 74(2) of the Excise Tax Act establishes that, if the Minister authorizes the deduction, it should be indicated in the notice of determination sent to the appellant. In the case at point, neither of the two refund applications indicated that the Minister's authorization was requested and, indeed, the Minister never authorized the taxpayer to deduct any amounts on its tax returns.*

Place of Hearing:	*Winnipeg, Manitoba*
Date of Hearing:	*February 17, 1993*
Date of Decision:	*September 8, 1993*
Tribunal Members:	*Lise Bergeron, Presiding Member* *Michèle Blouin, Member* *Desmond Hallissey, 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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Appeal No. AP-91-135

IMPERIAL CABINET (1980) CO. LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

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

REASONS FOR DECISION

This is an appeal under section 81.22 of the *Excise Tax Act*[1] (the Act) from an assessment of the Minister of National Revenue (the Minister).

On January 31, 1991, the appellant was assessed in the amount of $2,818.44 for the month of December 1990. On February 18, 1991, the appellant served a notice of objection with respect to that assessment. As the Minister did not send a notice of his decision within 180 days after the notice of objection was served, the taxpayer appealed the said assessment to the Tribunal.

On February 17, 1993, the Tribunal proceeded to hear the appeal. At the hearing, counsel for the respondent complained, on many occasions, that the respondent needed more explanations as to the appellant's position on the appeal. The appellant, indeed, did not file a proper brief under rule 34 of the *Canadian International Trade Tribunal Rules*,[2] which requires that an appellant set out:

> *(i) a concise statement of the grounds for appeal and of the material facts relevant to each ground,*
> *(ii) a description of the goods in issue,*
> *(iii) a concise statement of points in issue between the parties,*
> *(iv) the statutory provisions relied on,*
> *(v) a brief statement of argument to be made at the hearing, and*
> *(vi) the nature of the decision, order, finding or declaration sought.*

After lengthy discussion between counsel for the respondent, the representative of the appellant and the Tribunal as to the nature of the appeal, the representative of the appellant, Mr. E.R. Reid, a director and tax consultant with Revenue West, did provide some explanations. However, part of his explanations and a pile of documents that he introduced referred to another decision made by the Tribunal with respect to the appellant in *Imperial Cabinet (1980) Co. Ltd. v. The Minister of National Revenue*.[3] Given the obvious state of confusion as to the issues of the case, the Tribunal decided that it was in the parties' best interests to adjourn the

1. R.S.C. 1985, c. E-15.
2. SOR/91-499, August 14, 1991, Canada Gazette Part II, Vol. 125, No. 18 at 2912.
3. Appeal No. AP-91-045, March 2, 1992.

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hearing. In order to enable the parties, as well as the Tribunal, to proceed with the appeal, on March 1, 1993, the Tribunal, under rules 5, 25, 26, 29 and 34 of the *Canadian International Trade Tribunal Rules*,[4] directed the parties as follows:

> *1. The appellant must file a brief within 90 days from February 17, 1993, in which case, the respondent will have up to 60 days to file a supplementary response.*
> *2. The brief 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 a brief nor has it requested any extension of time to comply with the Tribunal's order. The Tribunal, therefore, proceeded with the appeal on the basis of the documents on file, which include the transcript of the hearing.

The Tribunal first notes that, included in the documents introduced by the representative of the appellant is a letter to the Prime Minister of Canada alleging that Manitoba taxpayers are treated unfairly. These documents also contain several letters sent to the Department of National Revenue (Revenue Canada) by Mr. Reid, which contain allegations of criminal offences, such as harassment and even terrorism, committed by Revenue Canada officials. In fact, those documents illustrate a certain belief by a person that a class of manufacturers in Manitoba is treated unfairly by Revenue Canada. It goes without saying that these issues fall far beyond the Tribunal's jurisdiction.

The only matter relevant to the Tribunal is whether the assessment is correct in law and in fact. In this regard, the representative's argument is that the Minister should have applied a credit when the appellant was assessed on January 31, 1991. The representative based his contention on the fact that an audit, which, he said, ought to recognize such a credit, was completed at the time of the assessment. He also submitted, in this regard, that two refund applications were filed by the appellant on May 23, 1990, and May 28, 1991, the latter covering the period between May 31, 1989, and December 31, 1990.

The representative of the appellant cited different provisions of the Act to sustain his argument. Few dealt precisely with the issue at point. However, given that the information which he submitted refers to refund applications made under section 68 of the Act, it seems clear that this case involves the Minister's power under subsection 74(1) of the Act. Subsection 74(1) provides that the Minister may authorize a taxpayer to deduct from its monthly tax returns an amount that, otherwise, the Minister would pay to that applicant under the Act. In the Tribunal's view, subsection 74(1) of the Act makes it clear that a taxpayer that wishes to deduct any amount from its monthly tax return must request the Minister's authorization at the time of its refund application and that the authorization is discretionary. Furthermore, subsection 74(2) of the Act clearly states that, if the Minister authorizes the deduction, it should be indicated in the notice of determination sent to the appellant.

In the case at point, neither of the two refund applications indicated that the Minister's authorization was requested and, indeed, the Minister never authorized the taxpayer to deduct

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4. *Supra*, note 2.

any amount on its tax returns. Moreover, the refund application of May 23, 1990, was considered in *Imperial Cabinet*, where the Tribunal dismissed the appeal from the determination which precisely disallowed that refund application. As to the refund application of May 28, 1991, it was filed after the assessment under appeal. Therefore, one wonders why and how the Minister would have authorized a deduction or credit when the appellant was assessed on January 31, 1991. In the first case, an objection to the determination that disallowed the refund application, and which was ultimately confirmed by the Minister and the Tribunal, was before the Minister at the time of the assessment. In the second case, the refund application had not yet been filed when the assessment was issued.

The Tribunal wishes to point out in this regard that, in administering the deduction of tax provisions, the Minister may have various reasons for not authorizing the deduction of certain amounts on the tax returns of certain applicants. The complexity of the relation between Revenue Canada and taxpayers in terms of the number of transactions involved and the situation of certain taxpayers with respect to their tax remittances explain, manifestly, why the Minister has been granted the type of discretion provided in section 74 of the Act.

In light of the foregoing, the Tribunal concludes that the appellant has failed to establish that the assessment is incorrect.

Consequently, the appeal is dismissed.

Lise Bergeron
Lise Bergeron
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Desmond Hallissey
Desmond Hallissey
Member