CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, June 12, 1992

Appeal No. AP-91-136

IN THE MATTER OF an appeal heard on April 30, 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 August 8, 1991, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

EPWORTH TRUCK INDUSTRIES LIMITED **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

John C. Coleman
John C. Coleman
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Robert J. Martin
Robert J. Martin
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-91-136

EPWORTH TRUCK INDUSTRIES LIMITED **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The issue in this appeal is whether the appellant can be relieved of outstanding taxes, penalty and interest accrued as a result of taking improperly calculated internal deductions from taxes payable to the Department of National Revenue because of alleged misinformation provided to the appellant by officers of that department.

***HELD**: The appeal is dismissed. A taxpayer has an obligation to ensure that its tax liability is properly calculated and remitted to the Department of National Revenue. This was not done by the appellant. A lack of understanding of the Excise Tax Act or misinformation, whether alleged or real, cannot relieve a taxpayer of its tax liability. The Tribunal does not have the jurisdiction to relieve a taxpayer of any penalty or interest accrued because of outstanding taxes.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*April 30, 1992*
Date of Decision:	*June 12, 1992*
Tribunal Members:	*Arthur B. Trudeau, Presiding Member* *John C. Coleman, Member* *Robert C. Coates, Q.C., Member*
Counsel for the Tribunal:	*David M. Attwater*
Clerk of the Tribunal:	*Dyna Côté*
Appearances:	*Barry Elliot Schwartz, for the appellant* *Howard A. Baker, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-136

EPWORTH TRUCK INDUSTRIES LIMITED **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
JOHN C. COLEMAN, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

The issue in this appeal is whether the appellant can be relieved of outstanding taxes, penalty and interest accrued as a result of taking improperly calculated internal deductions from taxes payable to the Department of National Revenue (Revenue Canada) because of alleged misinformation provided to the appellant by officers of Revenue Canada.

The appellant is a licensed manufacturer of rebuilt truck transmissions, differentials, compressors, valves and automotive parts. It also repairs customers' transmissions and differentials.

On March 1, 1989, Messrs. Earl Black and Gary Jarvis, officials of Revenue Canada, met with representatives of the appellant to discuss its sales tax liability. Mr. Barry Elliot Schwartz, who is the president of Mascot Truck Parts Inc., formerly Epworth Truck Industries Limited, appeared on behalf of the appellant. He testified that, at the meeting with the officials of Revenue Canada, they were presented with the formula used by the appellant to calculate its tax liability. Mr. Schwartz indicated that Mr. Black gave verbal approval of the method being used.

In its rebuilding operations, the appellant uses jobbed parts (goods bought for resale) purchased tax paid. Mr. Robert Mercure, who is an auditor for Revenue Canada, served as a witness for the respondent. He testified that the appellant was liable for tax on the sale price of the rebuilt units, but was entitled to a credit for the taxes already paid on the jobbed parts used in the rebuilding. It had two options to obtain that credit. The appellant could have taken an internal deduction from the monthly returns payable to Revenue Canada or it could have filed a refund claim pursuant to section 68 of the *Excise Tax Act* (the Act).[1] The appellant chose to take the internal deduction for taxes already paid.

When a taxpayer is unable to determine the exact amount of taxes already paid because such information is not provided by its suppliers, a formula may be used to approximate the actual taxes paid to arrive at an acceptable value for internal deduction or refund. Authority is

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

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provided pursuant to section 76 of the Act and the *Formula Refunds Regulations*.[2] This formula approximates the actual taxes paid on the goods. The formula applicable is found in section 28 of Excise Memorandum ET 313. The Memorandum dictates that a discount of 25 percent must be deducted from the net tax-included purchase price of the jobbed goods to arrive at an acceptable value for an internal deduction or refund.

On December 12, 1989, the appellant was visited by a tax assessment officer, Mr. Sherwin Albert, of Revenue Canada. He informed the appellant that it was incorrectly calculating the internal deduction taken as credit for taxes already paid. It was calculating its tax credit based on the full tax-included purchase price of parts used in rebuilding its stock units rather than deducting 25 percent from the tax-included purchase price. The appellant was informed that an auditor from Revenue Canada would visit. The appellant did not, however, start to deduct the 25 percent from the purchase price of the parts as it was informed to do.

In April 1990, Mr. Mercure audited the appellant, assessing it for all the back taxes accrued as a result of the appellant not deducting the 25 percent from the tax-included purchase price of the jobbed parts it used and for which it claimed an internal deduction for taxes paid thereon. As of April 29, 1992, the assessment totalled $30,480.73, including tax, penalty and interest.

Mr. Schwartz, representing the appellant, argued that a great deal of time and effort was utilized to determine how to properly calculate the company's tax liability. It employed a tax consultant and made numerous calls to Revenue Canada to verify the method recommended by the consultant. The formula was presented to Mr. Black on his visit in March 1989, and the appellant was misled into employing the method which received his approval, but later proved to be incorrect.

Mr. Schwartz claimed that when the appellant's competitors were found not to be paying sales tax they were not required to pay any back taxes or penalties, but presented no evidence to support this contention. He requested that the taxes, penalty and interest be waived.

Counsel for the respondent argued that the onus is on the appellant to prove that the assessment is incorrect. If the appellant cannot substantiate its objection, the appeal must be dismissed.

Counsel argued that it was the appellant's misunderstanding of the Act that resulted in its failure to correctly calculate its sales tax liability. The appellant was required to clearly establish its entitlement to the internal deduction it took. In instances where it is difficult to determine the internal deduction or amount of refund entitlement, the respondent permits refund applicants to use a formula to arrive at an acceptable value pursuant to section 76 of the Act and the *Formula Refunds Regulations*. The appellant failed to use this formula.

The fact that the appellant was unaware of both the 25 percent deduction as outlined in Excise Memorandum ET 313 and the deduction of actual taxes paid when calculating its sales tax liability does not discharge its liability to the Crown. Even if the appellant were not properly informed or were misinformed by an officer of Revenue Canada, estoppel would not apply against the Crown where there has been an incorrect interpretation of the law.

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2. C.R.C., c. 591.

Counsel finally argued that the Tribunal has no equitable jurisdiction.

The appellant has argued before the Tribunal that if a taxpayer legitimately endeavours to properly calculate its tax liability and, in doing so, relies on the representations of a Revenue Canada official, such taxpayer should not be held liable for unpaid taxes if such representations are proven to be incorrect. However, with this the Tribunal cannot agree.

The evidence adduced at the hearing was clear in that an incorrect formula for calculating the appellant's tax liability was developed by its consultant and utilized by the appellant. At the time the formula was conceived, there were discussions with officials of Revenue Canada. There was no evidence other than the allegations of Mr. Schwartz that the formula was approved by the officials. The Tribunal notes, however, that even after the second visit by an officer of Revenue Canada, when the appellant was informed that it was incorrectly calculating its tax liability, it continued to use the erroneous formula. Regardless of why the appellant adopted the incorrect formula, its use resulted in an unsatisfied tax liability against it.

A taxpayer has an obligation to ensure that its tax liability is properly calculated and remitted to Revenue Canada. This was not done by the appellant. A lack of understanding of the Act or misinformation, whether alleged or real, cannot relieve a taxpayer of its tax liability. The Tribunal does not have the jurisdiction to relieve a taxpayer of any penalty or interest accrued because of outstanding taxes. Accordingly, the appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

John C. Coleman
John C. Coleman
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member