CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, July 22, 1993

Appeal No. AP-91-140

IN THE MATTER OF an appeal heard on May 10, 1993, 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 February 18, 1991, relating to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

TREFFLÉ GOULET & FILS LTÉE **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Lise Bergeron
Lise Bergeron
Presiding Member

John C. Coleman
John C. Coleman
Member

W. Roy Hines
W. Roy Hines
Member

Michel P. Granger
Michel P. Granger
Secretary

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-91-140

TREFFLÉ GOULET & FILS LTÉE **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The appellant sold goods, sales tax exempt as provided in section 50 of the Excise Tax Act, to its client that, in turn, sold them abroad. The Department of National Revenue assessed the appellant because it was not the direct shipper of the goods abroad. The appellant then charged its client retroactively for the sales tax. The client applied for a refund of sales tax under section 68.1 of the Excise Tax Act which allows the refund of an amount equal to the tax, if the claim is made within two years of the date of export of the goods. The claim specified that the refund should be sent to the appellant. Part of the claim, however, was disallowed because it was presented after the two-year time limit. The appellant claims that consideration must be made for an error made in good faith when it sold the goods, sales tax exempt, to an intermediary prior to their export. It is asking that the amount covered by the claim be deducted from the assessment.

HELD: *The appeal is dismissed. The appellant did not show that the assessment was incorrect. Under section 50 of the Excise Tax Act, the appellant was liable for payment of the tax on the sale price of the goods. Through an administrative concession, the Department of National Revenue would have considered the sales to Hexalog Ltée tax exempt only if the appellant had been the direct shipper of the goods abroad.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*May 10, 1993*
Date of Decision:	*July 22, 1993*
Tribunal Members:	*Lise Bergeron, Presiding Member* *John C. Coleman, Member* *W. Roy Hines, Member*
Counsel for the Tribunal:	*Gilles B. Legault*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Manon Goulet, for the appellant* *Rosemarie Millar, for the respondent*

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-140

TREFFLÉ GOULET & FILS LTÉE **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: LISE BERGERON, Presiding Member
JOHN C. COLEMAN, Member
W. ROY HINES, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) with respect to an assessment which was confirmed by the Minister of National Revenue (the Minister).

The appellant is a manufacturer of doors and windows and holds a federal sales tax licence. On February 16, 1990, the appellant was assessed $10,868.53, including unpaid taxes of $8,911.16 plus interest and fine. On May 16, 1990, the appellant served a notice of objection contesting the part of the assessment relating to the interest and fine. On December 11, 1990, according to a letter from Mr. Daniel Caya, Manager, Collection - Duty, for the Department of National Revenue (Revenue Canada), the appellant's request was granted with respect to the fine. However, on February 18, 1991, the Minister confirmed the assessment. On May 21, 1991, Trefflé Goulet & Fils Ltée appealed the assessment, which was confirmed by the Minister, to the Tribunal. On January 15, 1993, the parties filed an agreed statement of facts and consented to the Tribunal proceeding without a hearing and ruling on the case on the basis of the written documentation before it, in accordance with rule 25 of the *Canadian International Trade Tribunal Rules*.[2]

The issue in this appeal is whether the appellant is liable for payment of sales tax on sales to one of its clients that subsequently resold the goods abroad.

The undisputed facts of the case are as follows. During the assessment period, from March 1, 1986, to December 31, 1989, the appellant sold goods to Hexalog Ltée (Hexalog) on four occasions without charging sales tax, goods which the latter exported. Because the goods were delivered to Hexalog, Revenue Canada ruled that they did not qualify for the exemption for direct shipments by the manufacturer provided for in Excise Memorandum ET 307[3] and therefore assessed the appellant. Upon receipt of the notice of assessment, the appellant charged the sales tax to Hexalog retroactively. Having resold the goods in issue to a foreign client, Hexalog, on March 8, 1990, claimed a refund of the sales tax under section 68.1 of the Act. That section stipulates that an amount equal to the amount of the tax may be paid if it is applied for

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. Direct Shipment Exemption, Department of National Revenue, December 1, 1975.

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

within two years after the goods are exported. In its claim, Hexalog stipulated that the refund be paid to the appellant. Revenue Canada allowed the claim for the refund, except for $2,833.36 relating to a sale made on October 9, 1987, because more than two years had passed between the submission of the claim and the export of the goods.

In its written arguments, the appellant requests payment of three amounts. First, it claims an amount of $2,833.36 corresponding to the amount which Revenue Canada refused to refund to Hexalog. Secondly, it claims $1,235.11 corresponding to the interest charged on the amount assessed, and lastly, it claims $1,810.55 as interest on the amount of the tax, specifically $8,911.16, which it argues was overpaid.

At the outset, the Tribunal points out that this matter relates to the assessment in respect of the appellant rather than to the refund claim per se, although the latter clarifies the matter at issue. The Tribunal notes that, under the Act, the appellant was liable for payment of the tax on the sale price of the goods. Through an administrative concession, Revenue Canada would have considered the sales to Hexalog to be tax exempt only if the appellant had been the direct shipper of the goods abroad. However, the goods were delivered to Hexalog, which resold them abroad. Under section 68.1 of the Act, Hexalog could not claim a sales tax refund until after the goods had been exported. It was granted that refund in part.

Consequently, in order to be successful in its appeal, the appellant had to prove to the Tribunal that the assessment was incorrect. However, the appellant essentially argued, on the grounds of equity, that an error had been made in good faith when it sold the goods tax exempt to an intermediary, in this instance, Hexalog. It claimed that it was unfair to apply the statutory time limit of two years stipulated in section 68.1 of the Act, particularly as it appeared to be the only reason for which the amount of $2,833.36 had not been refunded to Hexalog. While the Tribunal recognizes that the appellant's error was unintentional and due to a lack of understanding of the Act, the Tribunal has acknowledged on numerous occasions that it does not have jurisdiction to grant an appeal based on equity.

The Tribunal, therefore, finds that the assessment was correct. Indeed, it was based strictly on the text of the Act, more specifically subparagraph 50(1)(*a*)(i), which requires payment of the tax by the manufacturer when the goods are delivered to the purchaser. As for the application of the two-year time limit in section 68.1 of the Act, and while it does not have to do so in order to dispose of this appeal, the Tribunal points out that it has been acknowledged on numerous occasions that it does not have the power to disregard a time limit prescribed by the Act. Consequently, while it is possible to appeal the determination, it is likely to be confirmed unless it is possible to show that the goods were exported prior to the expiry of the two-year period. Since the assessment is correct, the appellant cannot claim interest as a result of an overpayment of federal sales tax.

Lastly, the Tribunal notes that it does not have jurisdiction to write off the interest charged on the assessed amount. The Tribunal wonders, however, given the circumstances of this case, whether the Minister could not establish a new assessment in respect of the appellant since the interest was initially calculated on a total of $8,911.16 of unpaid tax, a large part of which has since been refunded because the goods were exported.

The Tribunal is well aware of the difficulties that taxpayers may have in understanding the working of the Act and of the injustices that can, from time to time, befall those who do not understand all of its technicalities. However, the Tribunal is a quasi-judicial body which derives its authority from the law and which must, therefore, apply the law as it exists.

For all these reasons, the Tribunal must dismiss the appeal.

Lise Bergeron
Lise Bergeron
Presiding Member

John C. Coleman
John C. Coleman
Member

W. Roy Hines
W. Roy Hines
Member