



Ottawa, Monday, May 10, 1993

Appeal No. AP-92-143

IN THE MATTER OF an appeal heard on February 15, 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 August 14, 1992, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

PRAIRIE WEST INDUSTRIAL LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-143

PRAIRIE WEST INDUSTRIAL LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant is in the business of manufacturing detergents and cleaners for sale to commercial and industrial users. The issues in this appeal are whether all assessed sales were made under taxable conditions and whether the appellant has been properly assessed on the sale of goods in inventory or manufactured or produced from raw materials in inventory at the time of licensing.

HELD: *The appeal is dismissed. Having examined all the evidence and considered the arguments of both parties, the Tribunal is of the view that the appellant was unable to provide the Tribunal with cogent evidence to show that the customers in the sales transactions at issue were in fact tax exempt and that the calculation of its inventory credit was done incorrectly. Further, as previous decisions of the Tribunal make it clear, it is not within the Tribunal's jurisdiction to change any imposition of interest or penalty by the Minister of National Revenue in default of paying taxes.*

*Place of Hearing: Winnipeg, Manitoba
Date of Hearing: February 15, 1993
Date of Decision: May 10, 1993*

*Tribunal Members: Michèle Blouin, Presiding Member
Desmond Hallissey, Member
Lise Bergeron, Member*

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Janet Rumball

*Appearances: John Potter, for the appellant
Brian Tittmore, for the respondent*

Appeal No. AP-92-143

PRAIRIE WEST INDUSTRIAL LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

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

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from an assessment of the Minister of National Revenue (the Minister).

The appellant is in the business of manufacturing detergents and cleaners for sale to commercial and industrial users. The appellant became a licensed manufacturer for federal sales tax purposes on November 12, 1986. In late 1989, the appellant was audited by the respondent. The audit covered the period from November 12, 1986, to September 30, 1989. As a result of the audit, the respondent issued a notice of assessment, dated December 15, 1989. The assessment disallowed, in part, the appellant's use of a determined value, which the appellant believed to be authorized under Excise Memorandum ET 202.²

By notice of objection dated March 12, 1990, the appellant objected to the assessment on the basis that: (1) the determined value that it used was appropriate; (2) sales to customers with federal sales tax exemptions were not treated as exempt sales; and (3) tax was improperly assessed on sales of inventory on hand at the time that the appellant became a federal sales tax licensee because such goods were purchased tax-paid, and, thus, the assessment results in double taxation. By notice of decision dated August 14, 1992, the respondent confirmed the assessment in respect of the appellant's second and third objections, while accepting the first objection. The effect of the Minister's decision was to reduce the assessed amount from \$41,066.67, plus interest and penalty, to \$12,270.61, plus interest and penalty. Thus, it is with respect to the second and third objections that the appellant has appealed to the Tribunal.

The issues in this appeal are whether all assessed sales were made under taxable conditions and whether the appellant has been properly assessed on the sale of goods in inventory or manufactured or produced from raw materials in inventory at the time of licensing.

At the hearing, the Tribunal first heard testimony from the respondent's witness, Mr. Reg Rutherford, Appeals District Manager for the Department of National Revenue (Revenue Canada). Mr. Rutherford was the official that did the revisions to the initial audit of the appellant. Mr. Rutherford testified that the residual assessment at issue represented tax payable

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

2. Values for Tax, Department of National Revenue, Excise, April 1, 1973.

on sales to school divisions, the Canadian Forces, the RCMP, the City of Winnipeg and Carben Distributors. He stated that all of these entities were taxable customers to whom the appellant did not charge tax on sales made after it became a licensed manufacturer. With respect to the credit given to the appellant at the time of licensing, Mr. Rutherford stated that the appellant received credit for inventory based on the inventory figures in its December 1986 financial statement. Mr. Rutherford was cross-examined by the appellant's representative, Mr. John Potter. Mr. Potter's questions focussed primarily on concerns that he had about the manner in which Revenue Canada had dealt with the appellant's file.

Mr. Potter, who initially indicated that he wished only to make argument and cross-examine the respondent's witness, was then sworn to answer questions from the Tribunal and counsel for the respondent. In response to questions from the Tribunal, Mr. Potter agreed that the sales at issue related to those customers identified by Mr. Rutherford. With respect to sales to Carben Distributors, Mr. Potter said that these sales should be considered tax exempt because the goods were delivered directly by the appellant to Seven Oaks Hospital in Winnipeg, and the hospital had a tax-exempt number. Mr. Potter did not provide any documentary evidence in support of this position. When recalled, Mr. Rutherford stated that there was no evidence at the time of the audit that direct shipments were made by the appellant to the hospital and that the auditor concluded that the shipments went first to Carben Distributors. With regard to the issue of the credit for tax-paid inventory held at the time of licensing, Mr. Potter testified that he had not received a full credit for actual tax-paid inventory held at that time because he had not performed a full review of his inventory to determine how much of his inventory would qualify for the credit. Again, Mr. Potter could offer no documentary evidence in support of this position.

In argument, Mr. Potter submitted that the appellant was under the impression that the government accounts in issue were tax exempt. Mr. Potter also reiterated his concerns about how Revenue Canada had dealt with the appellant's case. The Tribunal notes that, in its brief, the appellant raised concerns about paying the interest and penalty imposed by the Minister, which the appellant stated were unjust.

Counsel for the respondent began his argument by submitting that the appellant had failed to satisfy its onus of showing that the respondent's calculation of the credit was incorrect, as it had not provided any evidence indicating that something in the calculation was wrong. Turning to the issue of whether the sales at issue were to tax-exempt purchasers, counsel submitted that the appellant had failed to provide evidence that demonstrated that the sales at issue were made directly to the hospital and referenced Mr. Rutherford's testimony that no such evidence was placed before the respondent during the audit. Counsel suggested that, in the circumstances, the Tribunal should find that these sales were taxable. Finally, with respect to the question of interest and penalty, counsel submitted that the Tribunal had already acknowledged, in the case of *Les Presses Lithographiques Inc. v. The Minister of National Revenue*,³ that it did not have jurisdiction to waive or alter either interest or penalty imposed by the Minister.

As noted by the Tribunal in *Sarto Plante Inc. v. The Minister of National Revenue*,⁴ in tax matters, the appellant bears the burden of showing through evidence that the allegations that it makes have substance. More specifically, the Tribunal stated:

3. Appeal No. 2997, June 26, 1989.

4. Appeal No. AP-90-017, March 16, 1992.

*It is not sufficient merely to claim that there are shortcomings or errors in an audit. The nature of such errors or shortcomings must be explained and evidence provided in order to clearly establish how they affect the validity of the assessment.*⁵

Unfortunately here, as in *Sarto Plante*, this was not done. Having examined all the evidence and considered the arguments of both parties, the Tribunal is of the view that the appellant was unable to provide the Tribunal with cogent evidence to show that the customers in the sales transactions at issue were in fact tax exempt and that the calculation of its inventory credit was done incorrectly. Finally, as previous decisions⁶ of the Tribunal make it clear, it is not within the Tribunal's jurisdiction to change interest or penalty imposed by the Minister in default of paying taxes.

Accordingly, the appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

Lise Bergeron
Lise Bergeron
Member

5. *Ibid.* at 2.

6. See also *Oerus Corporation Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-056, September 3, 1992.