



Ottawa, Wednesday, October 20, 1993

Appeal No. AP-92-212

IN THE MATTER of an appeal heard on April 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 June 19, 1992, with respect to
a notice of objection served under section 81.15 of the
Excise Tax Act.

BETWEEN

P.E. DESMARAIS & FILS LTÉE

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-212

P.E. DESMARAIS & FILS LTÉE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant questions the validity of the assessment sent to it by the respondent. The issue in this appeal is to determine whether this assessment is correct.

***HELD:** The appeal is dismissed. The appellant did not provide any evidence in support of its various claims.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: April 15, 1993
Date of Decision: October 20, 1993*

*Tribunal Members: Michèle Blouin, Presiding Member
Arthur B. Trudeau, Member
Lise Bergeron, Member*

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Janet Rumball

Appeal No. AP-92-212

P.E. DESMARAIS & FILS LTÉE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
ARTHUR B. TRUDEAU, Member
LISE BERGERON, Member

REASONS FOR DECISION

With the consent of the parties, the Tribunal disposed of the appeal on the basis of the written briefs before it.

The appellant has held a manufacturer's licence since September 3, 1985, and is involved in the production and sale of soft drinks. These products are sold to retailers and consumers. A notice of assessment for the period from November 1, 1987, to December 31, 1990, was sent to the appellant on November 8, 1991. Several reasons were given in the notice in support of the assessment, including the use of a determined value of 25 percent rather than 20 percent to establish the amount of tax payable, the ineligibility of deductions for transportation costs because of the use of determined values and, finally, errors in the calculations made by the appellant. This assessment was confirmed by a notice of decision dated June 19, 1992. These facts are not at issue.

The question at issue is whether the assessment is founded in fact and in law.

The appellant argues that it allegedly received incorrect information from an employee at the Trois-Rivières office of the Department of National Revenue (Revenue Canada) as to the manner in which to calculate the federal sales tax. The appellant maintains that the errors found during the inspection do not involve fraud and that it made every possible effort to do its best. The appellant also mentions the various problems it is facing, including the recession and strong competition. According to the appellant, payment of the amount owing as set out in the notice of assessment could have negative repercussions on its business.

For his part, counsel for the respondent argues that the burden rested with the appellant to show that the assessment was incorrect. In short, the appellant must prove the facts on which is based its contention and must show in what manner the assessment is incorrect. Counsel also argues that the allegation that the appellant was misinformed by representatives of the respondent on how to calculate the tax cannot be used as grounds for the non-payment of amounts owing to Revenue Canada. Lastly, counsel for the respondent argues that the assessment is correct.

After reviewing the file, the Tribunal is of the view that the appeal must be dismissed. Before proceeding further, the Tribunal insists on stating that it fully agrees with the appellant that the errors made do not constitute fraud. However, on the main issue, the Tribunal is of the view that the appellant did not fulfil the requirements of the burden of proof. There is nothing in the brief nor in the other documents submitted by the appellant to justify the method used to make the calculations.

It is clearly evident from the appellant's brief that it is relying on an argument of equity. While the Tribunal sympathizes with the appellant because of its financial difficulties, it is well established that the Tribunal does not have jurisdiction in matters of equity.

For these reasons, the appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Lise Bergeron
Lise Bergeron
Member