CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, July 23, 1993

Appeal No. AP-92-290

IN THE MATTER OF an appeal heard on May 25, 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 November 6, 1992, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

HENDRICKSON CANADA LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

W. Roy Hines
W. Roy Hines
Presiding Member

John C. Coleman
John C. Coleman
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
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UNOFFICIAL SUMMARY

Appeal No. AP-92-290

HENDRICKSON CANADA LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The appellant filed an application under section 48 of the Excise Tax Act to be considered the manufacturer or producer of goods that it sold in conjunction with goods that it manufactures or produces, or that were of the same class. The application mentioned "Heavy duty truck parts required to be supplied to the aftermarket for sale previously manufactured in this facility [Hendrickson Canada Ltd.]. These parts are sold with above manufactured goods as complete suspension units." The issue in this appeal is whether the appellant was correctly assessed, considering the election that it made under the Excise Tax Act.

HELD: *The appeal is dismissed. The appellant's contention was that its election should apply only to goods that it previously manufactured. However, there is no evidence that the election should apply to a narrower category of heavy-duty truck parts than that previously approved by the Minister of National Revenue.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*May 25, 1993*
Date of Decision:	*July 23, 1993*
Tribunal Members:	*W. Roy Hines, Presiding Member* *John C. Coleman, Member* *Lise Bergeron, Member*
Counsel for the Tribunal:	*Gilles B. Legault*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Rose Mailloux, for the appellant* *Ian McCowan, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-92-290

HENDRICKSON CANADA LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: W. ROY HINES, Presiding Member
JOHN C. COLEMAN, 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 that was confirmed by the Minister of National Revenue (the Minister).

On February 23, 1990, the appellant was assessed in the amount of $2,086, including unpaid taxes, interest and penalty for the period from February 24, 1986, to December 31, 1989. In early 1991, the Tribunal granted the appellant an extension of time to serve an objection to the assessment. On February 13, 1991, the appellant served a notice of objection in which it contested the assessment and claimed that it was entitled to recover a portion of tax overpaid and that it was entitled to a refund for the period from January 1 to July 31, 1988. On November 6, 1992, the assessment was confirmed on the grounds that the appellant's election covered all other heavy-duty truck parts that it sold in conjunction with sales of heavy-duty truck parts of its own manufacture, or that were of the same class of goods. The Minister found that the other heavy-duty truck parts included imported bolts, bushings, seals, washers and other fittings required to install truck parts manufactured by the appellant.

The issue in this appeal is whether the appellant was correctly assessed considering the election that it made under section 48 of the Act and, more precisely, whether the election applied only to goods that the appellant previously manufactured.

The representative of the appellant argued that, while the appellant elected to be considered the manufacturer of heavy-duty truck parts, its election should apply only to those parts it previously manufactured. She affirmed that imported goods such as bolts, seals, washers, bushings and other fittings required for the installation of the heavy-duty suspension parts are not goods similar to those that the appellant manufactures, but complementary products.

Counsel for the respondent argued that there is nothing in section 8 of the application form[2] which could "trump" the wording of section 48 of the Act. Counsel maintained that it is inconsistent for the appellant to argue that "jobbed goods" are required for the installation of heavy-duty suspension parts while maintaining that they are somehow dissimilar. Counsel also contended that "jobbed goods" are sold in tandem with goods manufactured by the appellant

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1. R.S.C. 1985, c. E-15.
2. Department of National Revenue, Customs and Excise, "Application for Permission to be Considered as the Manufacturer or Producer of 'Other Goods' under Section 26.1 of the *Excise Tax Act*."

and, therefore, that they are "sold in conjunction with" or "of the same class as" those goods, within the meaning of section 48 of the Act. Finally, counsel added that there cannot be any retroactive revocation of the election made by the appellant.

In the Tribunal's view, section 48 of the Act is clear and unambiguous in providing that a manufacturer may, at its discretion, elect to be considered as the manufacturer of "similar goods" that it sells in conjunction with goods of the same class as goods that it manufactures or produces in Canada. The application filed by the appellant under this section mentioned:

> *Heavy duty truck parts required to be supplied to the aftermarket for sale previously manufactured in this facility [Hendrickson Canada Ltd.]. These parts are sold with above manufactured goods as complete suspension units.*

The letter of approval or acceptance from the Department of National Revenue (Revenue Canada) specified that the election applied to "heavy duty truck parts." While it is possible that some misunderstanding may have existed between the parties as to what was actually covered bythe election, the Tribunal notes that at no time prior to the hearing of this case did the appellant specifically name individual parts to be covered by the election or indicate to Revenue Canada that the election might apply to a narrower category of heavy-duty truck parts than that previously approved. In this connection, it is also worth noting that the appellant did not establish a separate category in its records for "goods previously manufactured," as one might normally expect if these goods were to be accorded different tax treatment.

The Tribunal has given careful consideration to the evidence, the testimonies of Mr. Barry K. Redden and Ms. Rose Mailloux, and the arguments put forward by both parties in this appeal. The Tribunal considers the test provided in subsection 48(3) of the Act to be crucial, i.e. that the Minister must approve the application and "send to the applicant a notice in writing setting out his decision." It is clear from Exhibit B-2 that the Minister approved the application "with respect to heavy duty truck parts" and that this designation was not qualified in any manner in the approval notice provided by Revenue Canada. As indicated above, no evidence was provided by the appellant that an alternative ruling was sought. Further, given the evidence, the Tribunal concludes that the goods in issue are of the same class as goods that the appellant manufactured or produced. In the circumstances, there are no grounds which would support the appeal.

Accordingly, the appeal is dismissed.

W. Roy Hines
W. Roy Hines
Presiding Member

John C. Coleman
John C. Coleman
Member

Lise Bergeron
Lise Bergeron
Member