CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, August 15, 1989

Appeal No. 3026

IN THE MATTER OF an application heard April 20, 1989, pursuant to section 81.19 of the *Excise Tax Act*, R.S.C. 1985 c. E-15 (the Act) as amended;

AND IN THE MATTER OF two notices of decision of the Minister of National Revenue dated April 26, 1988, with respect to a notice of objection filed pursuant to section 81.17 of the Act.

BETWEEN

GLOBAL TRADING CORPORATION **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal declares that the 1987 GM Sport Van and the 1988 GM Suburban, subjects of the respondent's notices numbered 70995RE and 70994RE, were used in Canada prior to being exported and therefore do not qualify for exemption of federal sales tax under section 7 of the *General Excise and Sales Taxes Regulations* C.R.C., vol. VI, c. 594.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Kathleen Macmillan
Kathleen Macmillan
Member

Robert J. Martin
Robert J. Martin
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. 3026

GLOBAL TRADING CORPORATION **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

Excise Tax Act - Sales Tax - Whether a Sport Van and a Suburban sold as demonstrators and having approximately 4,000 km on their odometers, were used in Canada prior to the date of their exportation.

DECISION*: The appeal is dismissed. The goods were used in Canada prior to being exported. They do not meet the requirement of the Act and are not exempted from sales tax.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*April 20, 1989*
Date of Decision:	*August 15, 1989*
Panel Members:	*Sidney A. Fraleigh, Presiding Member* *W. Roy Hines, Member* *Kathleen Macmillan, Member*
Counsel for the Tribunal:	*Lyne Letarte*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Katherine Tsetsos for the Appellant* *Michèle Joubert for the Respondent*
Statutes and Regulations Cited*:*	*Excise Tax Act, R.S.C. 1985 c. E-15, ss. 81.17 and 81.19; Canadian International Trade Tribunal Act, S.C. 1988, c. 56, s. 60; General Excise and Sales Tax Regulations, C.R.C., vol. VI, c. 594, s. 7.*

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Appeal No. 3026

GLOBAL TRADING CORPORATION **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
W. ROY HINES, Member
KATHLEEN MACMILLAN, Member

REASONS FOR DECISION

SUMMARY

The appellant, Global Trading Corporation, purchased a 1987 General Motors of Canada Limited (GM) Sport Van and a 1988 GM Suburban from Plaza Chevrolet Oldsmobile Cadillac Inc. (Plaza) that were classified on their individual bill of sale as "demo." Each vehicle had a number of kilometers on its odometer. The appellant exported the vehicles through the United States and applied for a refund of the sales tax, which was refused on the grounds that the goods were used in Canada.

The appellant argued before the Tribunal that the car industry considered demonstrators as new, as they carried the GM new car warranty with them on the subsequent sale. Therefore, the appellant should be eligible for the sales tax refund on exportation.

The legislation clearly states that a refund of the tax paid may be granted if the goods have not been used in Canada. A strict interpretation of the legislation would preclude certain goods from ever being eligible for tax refund after export (e.g. a car has to be driven off the assembly line). The Tribunal does not believe Parliament intended the legislation to be that restrictive and, therefore, would support a claim for refund of tax on exported goods where the "use" is an incident of their export from Canada.

The appeal is not allowed. The subject goods in this case were clearly used in Canada far beyond this exception as witnessed by the odometer readings.

THE LEGISLATION

The relevant provision of the *Excise Tax Act*[1] is as follows:

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1. R.S.C. 1985, c. E-15, which was known as R.S.C. 1970, c. E-13.

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> *68.1 Where tax under this Act has been paid in respect of any goods and a person has, in accordance with regulations prescribed by the Minister, exported the goods from Canada, an amount equal to the amount of the tax shall, subject to this Part, be paid to that person if he applies therefor within two years after the export of the goods.*

The relevant provision of the *General Excise and Sales Tax Regulations*[2] (Regulations) is as follows:

> *7. Where goods on which sales tax or excise tax has been paid under the Act are exported without having been used in Canada, a refund of the taxes so paid or a deduction from future taxes payable may be granted,*
>
> *(a) if evidence of payment of the tax on the purchase of the goods, in the case of domestic goods, or*
>
> *(b) if evidence of payment of the tax on the importation of the goods in the form of a receipted copy of the original import entry, in the case of goods imported into Canada*
>
> *is maintained on file by the exporter for examination by officers of the Department and evidence satisfactory to the Minister is produced to establish that the goods have been exported from Canada.*
>
> (emphasis added)

> *7. Lorsque des marchandises à l'égard desquelles la taxe de vente ou la taxe d'accise a été payée en vertu de la Loi sont exportées sans avoir été utilisées au Canada, les taxes ainsi payées peuvent être remboursées ou être déduites des taxes qui deviendront payables, si,*
>
> *a) dans le cas de marchandises nationales, la preuve du paiement de la taxe lors de l'achat des marchandises, ou*
>
> *b) dans le cas de marchandises importées au Canada, la preuve du paiement de la taxe lors de l'importation des marchandises, sous la forme d'une copie quittancée de la déclaration d'importation originale,*
>
> *est conservée dans les dossiers de l'exportateur aux fins d'examen par les agents du ministère, et si l'on peut établir, à la satisfaction du Ministre, que les marchandises ont été exportées du Canada.*
>
> (soulignement ajouté)

THE FACTS

This is an appeal pursuant to section 81.19 of the Act from two notices of decision of the respondent dated April 26, 1988, confirming notices of determination MTL 32821 and

2. C.R.C., vol. VI, c. 594.

MTL 33131 dated December 18, 1987, and February 5, 1988, respectively. The Minister set aside the refund claims because the goods exported were identified as "demo" cars and were not sold as new. The subject goods, since they were used in Canada before their exportation, did not meet the provision of the Act and the Regulations allowing for a refund.

The respondent's decision was appealed to the Tariff Board on July 21, 1988. The appeal, being a continuation of proceedings commenced before the *Canadian International Trade Tribunal Act*[3] came into force, is taken up by the Canadian International Trade Tribunal by virtue of section 60 of that act.

The appellant sought a declaration that the subject goods, a 1987 Sport Van and a 1988 Suburban, both manufactured by GM and exported first to the United States and then to Norway, qualify for exemption from sales tax pursuant to section 7 of the Regulations.

In July and in October 1987, Plaza, a car dealer, purchased the newly manufactured goods in issue from GM. Plaza sold the two vehicles to the appellant in October and in November 1987. The cars were referred to as "demo" in the contracts with readings of 4,200 km for the Sport Van and 3,926 km for the Suburban.

The president for the appellant testified as to the use of the goods by Plaza and as to the meaning of the words "new" and "demo" vehicle in the automobile industry. The vehicles were driven by Plaza executives. The witness testified that he received no discount for the vehicles because they were demonstrators and that they are considered new vehicles in the industry and benefit from the GM new car warranty.

The witness testified that he did not use the goods in issue. Three to nine days after purchasing the vehicles, the appellant had them driven directly to the American border, to be loaded on a boat destined for Europe. The distance from the appellant's place of business and the border crossing added approximately 70 km on each odometer.

THE ISSUE

The question at issue is whether the two vehicles were used in Canada prior to being exported.

Counsel for the appellant argued that the automobile industry classified demonstrators, used by the dealer's executives, as new vehicles. The goods in issue should be considered by the Tribunal as new and not as used vehicles because the GM new car warranty (up to 20,000 km or 12 months) is applicable to demonstrators. Furthermore, the appellant purchased the goods specifically for export and did not use the vehicles except to drive them to the border crossing. From the time they were manufactured to the moment they were bought for exportation by the appellant, the cars were in Canada for one to three months. Such time frame cannot constitute use. In order to give meaning to the applicable regulations, the interpretation by the automobile

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3. S.C. 1988, c. 56.

industry of the words "demonstrator," "new" and "used" must be considered. The industry does not link the term "use" to the kilometers on the odometer. A demonstrator, driven by the dealer's principal executives during one to three months, does not constitute use because such car is sold as new, at a price corresponding to a new vehicle. The appeal should be allowed.

Counsel for the respondent stated that the question at issue is not whether the goods were used cars, but whether they have been used in Canada. In the French equivalent, section 7 of the Regulations refers to the term *utilisées au Canada* (having been used in Canada). If Parliament had intended such expression to mean "used goods," the appropriate vocabulary would have been *marchandises usagées*. The evidence is clear that both the Sport Van and the Suburban were used prior to the exportation, the odometers indicating 4,200 and 3,926 km respectively. Whether the goods in issue are considered by the automobile industry as demonstrators or as used cars is irrelevant. The test provided by section 7 of the Regulations refers to one specific requirement for a refund claim to be allowed: the goods must be "exported without having been used in Canada." The evidence is to the contrary. The appeal should be dismissed.

DECISION

According to section 68.1 of the Act and section 7 of the Regulations, a refund of the tax paid may be granted if the goods on which sales tax has been paid are exported without having been used in Canada.

If those sections were meant to be interpreted literally, any use of the good exported would prohibit the exporter from seeking a refund on sales or excise tax paid on that exported good. Individuals exporting vehicles from Canada would not be allowed to claim a refund if they had merely driven the vehicle to a train station or other point of embarkation for export. The Tribunal does not consider such narrow reading of the above-mentioned sections to correspond to the legislator's intent.

To find otherwise would exclude certain classes or types of goods on which tax has been paid from the exempting provision of section 7 of the Regulations. It would also be contrary to the clear meaning of section 68.1 of the Act where any goods, on which tax has been paid under the Act and which are subsequently exported in accordance with the Regulations, fall within the export refund provisions.

The Tribunal heard evidence that the vehicles were used by the dealer's executives and that this use was not incidental to their export. The Tribunal notes that section 7 of the Regulations does not require a specific entity, be it the exporter, the owner, the manufacturer, the dealer etc., to have been responsible for the use in Canada of the subject goods.

In view of the evidence and of section 7 of the Regulations, the Tribunal concludes that the goods in issue, a 1987 GM Sport Van and a 1988 GM Suburban, were used in Canada prior to their export and that use was not incidental to their exportation.

CONCLUSION

The goods exported, having been used in Canada, do not meet the exempting requirements of the Act.

The appeal is dismissed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

W. Roy Hines
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Member

Kathleen Macmillan
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Member