



Ottawa, Friday, June 23, 1989

Appeal No. 3062

IN THE MATTER OF an application heard May 15, 1989, pursuant to section 51.19 of the *Excise Tax Act*, R.S.C. 1970, c. E-13 (the Act) as amended;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated June 30, 1988, with respect to the Act.

BETWEEN

H.S. SHERGILL

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal declares that the appellant is not eligible to claim a refund pursuant to section 44.1 of the *Excise Tax Act* and section 7 of the General Excise and Sales tax Regulations of sales tax paid on the purchase of a Volkswagen camper, Model No. 253901, Serial No. WV2ZB0253GH048762.

Kathleen Macmillan
Kathleen Macmillan
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 3062

H.S. SHERGILL

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Excise Tax Act - Sales Tax - Whether a Volkswagen camper has been used in Canada prior to being exported to the United States - Whether eligible to claim a refund of sales tax under section 44.1 of the Excise Tax Act and section 7 of the General Excise and Sales Tax Regulations.

DECISION: *The appeal is dismissed. The appellant has used his vehicle prior to exporting it from Canada. While the Tribunal considers that a taxpayer is not disqualified from claiming a refund if goods have been used as an incident of their export, the appellant has not used the camper in this manner.*

Place of Hearing: Calgary, Alberta

Date of Hearing: May 15, 1989

Date of Decision: June 23, 1989

Panel Members: Kathleen Macmillan, Presiding Member

Sidney A. Fraleigh, Member

W. Roy Hines, Member

Counsel for the Tribunal: Clifford Sosnow

Clerk of the Tribunal: Lillian Pharand

Appearances: K.J.S. Shergill, for the Appellant

J. Fitzgerald, for the Respondent

Statutes and

Regulations Cited:

Excise Tax Act, R.S.C. 1970, c. E-13, ss. 44.1 and 51.19; Canadian International Trade Tribunal Act, S.C. 1988, c. 56, subs. 54(2) and s. 60; General Excise and Sales Tax Regulations, C.R.C., c. 594, s. 7.

Appeal No. 3062

H.S. SHERGILL

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

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

REASONS FOR DECISION

SUMMARY

The appellant, a Canadian citizen residing in the United States, purchased a Volkswagen camper in Calgary on July 17, 1986, and drove it to his place of residence in the United States the next day. He chose not to export the vehicle at that time since he was uncertain whether he would remain in the United States or take up residence in Canada. He would only export the vehicle if his wife, a Canadian citizen residing in Calgary, could obtain a United States work permit. When his wife received the work permit, the appellant drove the camper back to Calgary to pick up his family and returned to the United States, making an export declaration on July 17, 1987.

The issue facing the Tribunal is whether the appellant can get a refund of sales tax paid when he bought the camper pursuant to section 44.1 of the *Excise Tax Act*¹ (the Act) and section 7 of the *General Excise and Sales Tax Regulations*² (the Regulations) on the basis that the camper was not used in Canada prior to its export.

The appeal is not allowed. The evidence is that prior to being exported on July 17, 1987, the vehicle was driven from Calgary to the appellant's home in California, back to Calgary one year later and then back to California once again. While the Tribunal considers that a taxpayer is not disqualified from claiming a refund if goods have been used as an incident of their export, the appellant's use of the camper exceeded this standard.

1. R.S.C. 1970, c. E-13; now R.S.C. 1985, c. 7 (2nd Supp.), s. 68.1.

2. C.R.C., c. 594.

THE LEGISLATION

The relevant legislative provisions, as they read during the period in issue, are as follows:

(a) The Excise Tax Act

44.1 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 that tax shall, subject to this Part, be paid to that person ...

(b) The General Excise And Sales Tax Regulations

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 ... 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 Department and evidence satisfactory to the Minister is produced to establish that the goods have been exported from Canada.

Although the appeal was originally commenced before the Tariff Board, the appeal is taken up and continued by the Canadian International Trade Tribunal (the Tribunal) in accordance with subsection 54(2) and section 60 of the *Canadian International Trade Tribunal Act*.³

THE FACTS

The appellant, a Canadian citizen residing in El Dorado Hills, California, purchased a motor vehicle (a Volkswagen camper, Model No. 253901, Serial No. WV2ZB0253GH048762) from Fifth Avenue Auto Haus Ltd., of Calgary, Alberta, on July 17, 1986. The appellant paid federal sales tax in the amount of \$1,976.04. He submitted a refund claim on January 21, 1988, requesting a refund of federal sales tax paid on the subject vehicle. The basis for the claim was that after purchasing the vehicle, he exported it to the United States and thus, he is eligible for the refund pursuant to section 44.1 of the Act and section 7 of the Regulations.

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

The Department of National Revenue informed the appellant by Notice of Determination No. TOR 38093 on March 14, 1988, that his refund claim had been disallowed. The appellant filed two notices of objection on June 8, 1988, and June 15, 1988, but the Minister of National Revenue disallowed the appellant's claim by Notice of Decision No. 80218RE on June 30, 1988, on the grounds that the camper had been used in Canada prior to being exported. The appellant filed an appeal to the Tariff Board on October 10, 1988, pursuant to section 51.19 of the Act.⁴

Mr. H.S. Shergill did not appear at the hearing. His brother, Mr. K.J.S. Shergill, and his brother-in-law, Mr. G.S. Chohan, testified in support of the appellant's position.

The witnesses said that the appellant took delivery of his vehicle in Calgary on July 18, 1986, and drove the camper to his California residence on that date.

The appellant did not sign an export declaration when he entered the United States on July 18, 1986. Indeed, he kept Alberta license plates on the camper. The witnesses said that the appellant did not intend to export the vehicle to the United States on that date because he was not sure whether his wife, a Canadian citizen, would be able to obtain a United States work permit (green card). He would only export the vehicle when he knew for certain that his wife could work in the United States. Otherwise, he would return to Canada and live with his family in Calgary.

Events turned out favourably for the appellant. His wife was permitted to work in the United States. The appellant drove the camper to Calgary in July 1987, picked up his family and his wife's green card and returned to the United States on July 17, 1987. He signed an export declaration for the vehicle on that date.

Mr. K.J.S. Shergill claimed that the appellant did not bring the camper into Canada between July 18, 1986, and July 17, 1987, although he only had personal knowledge of how the camper was used until October 1986.

The appellant admits that the camper was exported to the United States on July 17, 1987.

THE ISSUE

The issue in this appeal is whether the Volkswagen camper has been used prior to being exported to the United States. If it has not been used prior to export, then the appellant is entitled to a refund of federal sales tax.

The appellant's argument is simply that the vehicle was not used in Canada prior to being exported to the United States.

4. R.S.C. 1970, c. E-13; now R.S.C. 1985, c. E-15, s. 81.19.

The respondent's argument is that in order to qualify for a refund, the appellant must demonstrate that the camper was not used in Canada prior to export. At a minimum, the camper was used by the appellant in Canada to drive from the dealership to the U.S. border in July 1986, to drive from the U.S. border to Calgary in July 1987 and finally, to return to the United States on July 17, 1987.

In view of the foregoing, the respondent maintains that the camper was used prior to being exported to the United States.

DECISION

The evidence indicates to the Tribunal that the camper was exported on July 17, 1987. The appellant did not sign an export declaration on July 18, 1986. He did not intend to export the vehicle on that date. Mr. Shergill did sign an export declaration on July 17, 1987, and admits that the camper was exported to the United States on that date.

Therefore, the Tribunal must determine whether the appellant used his camper prior to July 17, 1987.

A literal interpretation of section 44.1 of the Act and section 7 of the Regulations indicates that any use of goods which are subsequently exported will prevent a person from seeking a refund on sales or excise tax paid on the exported goods.

However, the Tribunal does not consider that Parliament intended these sections to be read in this manner. If they are given a literal interpretation, then, for example, individuals exporting cars from Canada will not be allowed to claim a refund if they have merely driven the vehicle to a train station or other point of embarkation for export. In other words, a literal interpretation of these sections would exclude certain classes or types of goods on which sales or excise tax has been paid.

This conclusion does not accord with the plain meaning of section 44.1 of the Act and section 7 of the Regulations. Section 44.1 clearly states that 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. Similarly, section 7 does not state that only certain classes or types of goods on which tax has been paid fall within the export refund provisions.

It is for this reason that the Tribunal considers that a taxpayer should not be disqualified from claiming a refund of sales or excise tax pursuant to section 44.1 of the Act and section 7 of the Regulations where goods have been used in Canada prior to export, provided the use is an incident of their export from Canada.

The Tribunal does not consider that the use of the camper prior to July 17, 1987, was an incident of its export. Clearly, the appellant could have exported his camper when he initially used the vehicle to drive to his California residence on July 18, 1986. He chose not to do so. Rather he chose to subsequently drive back to Calgary in July 1987 before he finally decided to export the vehicle on July 17, 1987.

The use of the camper in Canada after it had initially been driven to the United States in July 1986 was not an incident of its export, but was a consequence of the appellant's choice not to export the vehicle until he was sure that his family could emigrate to the United States.

CONCLUSION

Based on the foregoing, the Tribunal concludes that the appellant used his Volkswagen camper in Canada prior to export on July 17, 1987, and as such is not eligible to claim a refund of sales tax pursuant to section 44.1 of the Act and section 7 of the Regulations.

The appeal is dismissed.

Kathleen Macmillan
Kathleen Macmillan
Presiding Member

Sidney A. Fraleigh
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Member

W. Roy Hines
W. Roy Hines
Member