



Ottawa, Tuesday, April 1, 2003

**Appeal No. AP-2002-010**

IN THE MATTER OF an appeal heard on January 15, 2003,  
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 February 15, 2002, with respect to a  
notice of objection served under section 81.17 of the *Excise Tax  
Act*.

**BETWEEN**

**CORLAB INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Zdenek Kvarda  
Zdenek Kvarda  
Member

Ellen Fry  
Ellen Fry  
Member

Michel P. Granger  
Michel P. Granger  
Secretary



**UNOFFICIAL SUMMARY**

**Appeal No. AP-2002-010**

**CORLAB INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

The appeal concerns a notice of decision dated February 15, 2002, which confirmed the determination allowing for a partial refund for overpaid federal sales tax but disallowing the claim for the remaining amount sought by Corlab Inc. for federal sales tax paid on imaged articles.

**HELD:** The appeal is dismissed. Corlab Inc. provided no evidence, such as invoices that indicated the dollar value of products made by it from imaged articles, to substantiate its claim. The Tribunal is of the view that the onus was on Corlab Inc. to demonstrate a *prima facie* case for the validity of its claim for the remaining tax allegedly paid in error. The evidence presented by Corlab Inc. did not do so.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: January 15, 2003  
Date of Decision: April 1, 2003

Tribunal Members: Pierre Gosselin, Presiding Member  
Zdenek Kvarda, Member  
Ellen Fry, Member

Counsel for the Tribunal: Michèle Hurteau  
Clerk of the Tribunal: Margaret Fisher

Parties: Michael Kaylor, for the appellant  
Jean-Robert Noiseux, for the respondent



**Appeal No. AP-2002-010**

**CORLAB INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member  
ZDENEK KVARDA, Member  
ELLEN FRY, Member

**REASONS FOR DECISION**

This appeal, made pursuant to section 81.19 of the *Excise Tax Act*,<sup>1</sup> raises the issue of whether Corlab Inc. (Corlab) is entitled to a refund of federal sales tax paid in error on imaged articles under section 68. Corlab filed a refund application in the amount of \$129,559.78 for overpaid federal sales tax. On May 8, 2000, the Minister of National Revenue (the Minister) issued a notice of determination and allowed a partial claim in the amount of \$67,528.42, but disallowed the remainder of the claim for \$62,031.36. On June 20, 2000, Corlab served a notice of objection. On February 15, 2002, the Minister issued a notice of decision confirming the May 8, 2000, determination and indicating that a partial refund had been allowed and that the remaining amount sought was for printed matter subject to federal sales tax. The appeal is from this decision.

**ARGUMENT**

Corlab submitted that it is entitled to a refund of the federal sales tax that it paid in error on the imaged articles that it made, pursuant to section 68 of the Act and as was confirmed by the Federal Court of Appeal in *Minister of National Revenue (Customs and Excise) v. Baird (Tom) & Associates*.<sup>2</sup> The Minister opposed the appeal on the grounds that Corlab had the onus to establish that it is entitled to the requested tax refund. Given that Corlab's brief was stricken from the record and that Corlab was not allowed to present oral evidence, the Minister submitted that Corlab did not discharge its onus to establish that it is entitled to the tax refund. Moreover, Corlab did not establish a *prima facie* case for the validity of the claim and consequently, it is not entitled to the refund, and the appeal should be dismissed.

**DECISION**

**Preliminary Matter**

On July 22, 2002, Corlab filed its brief. On August 20, 2002, the Minister wrote to the Tribunal, submitting that Corlab's brief contained very few details and that it was therefore difficult for the Minister to prepare the Minister's brief, to fully understand the grounds raised and to provide the Tribunal with all the

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1. R.S.C. 1985, c. E-15 [hereinafter Act].  
2. (1997), 221 N.R. 201.

information needed to decide on the merits of the case. Moreover, Corlab had indicated in its brief that it would rely on oral evidence at the hearing to substantiate its refund entitlement. It did not provide any indication of the type of evidence that would be submitted. The Minister requested to be allowed to conduct an “out-of-court” examination of a representative of Corlab and an additional delay in filing the Minister’s brief.

On August 26, 2002, the Tribunal indicated to the parties that the *Canadian International Trade Tribunal Rules*<sup>3</sup> do not provide for “out-of-court” examinations of witnesses during the conduct of an appeal. It also ruled that Corlab’s brief was not sufficient to meet the requirements set out in rule 34. The Tribunal noted that Corlab had implied that it intended to “rely on oral evidence during the course of the hearing to substantiate their refund entitlement” without providing information as to what the testimony was going to be. It directed Corlab to file, by September 20, 2002, an amended brief that fulfilled the requirements established by rule 34. The Tribunal indicated that, if these requirements were not fulfilled, Corlab’s brief would be stricken from the record and the appeal would be decided on the remainder of the record. Not having received the amended brief by that date, on September 30, 2002, the Tribunal informed the parties that Corlab’s existing brief had been stricken from the record and that the case would be determined on the basis of the remainder of the record and without oral evidence from Corlab. The Minister filed the Minister’s brief on October 18, 2002.

In a letter dated November 19, 2002, the Minister requested that the Tribunal decide on the merits of the case based on the documents filed. The Minister submitted that there was no need for an oral hearing, as Corlab would not be allowed to present oral evidence and the Minister would not be calling any witnesses. On November 20, 2002, Corlab advised that it had no objection to the Tribunal deciding the appeal on the basis of the documents already filed with the Tribunal. On January 15, 2003, the Tribunal decided the matter without an oral hearing, based on the documents already filed.

### **Decision on the Merits**

The Tribunal notes that the Minister had accepted Corlab’s original claim, in part, and had refunded more than half of the amount claimed. Therefore, the appeal concerns the remaining amount of Corlab’s original claim.

Corlab submitted to the Tribunal that the amount was paid in error and that it should receive a refund of \$62,031.36. However, it provided no evidence, such as invoices that indicated the dollar value of products made by it from the imaged articles, to substantiate its claim. The Tribunal finds that there is insufficient evidence to conclude that Corlab did pay the federal sales tax in error on imaged articles and that it should be entitled to a refund pursuant to section 68 of the Act.

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3. S.O.R./91-499.

As in *Prolith Incorporated*,<sup>4</sup> the Tribunal is of the view that the onus was on Corlab to demonstrate a *prima facie* case for the validity of its claim for the remaining tax allegedly paid in error. The evidence available to the Tribunal did not establish a *prima facie* case for Corlab. Therefore, the appeal is dismissed.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Zdenek Kvarda  
Zdenek Kvarda  
Member

Ellen Fry  
Ellen Fry  
Member

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4. *Prolith Incorporated v. MNR* (3 October 2002), AP-99-039 and AP-99-058 (CITT).