



Ottawa, Thursday, April 10, 2003

Appeal No. AP-2002-005

IN THE MATTER OF an appeal heard on November 20, 2002,
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 8, 2002, with respect to a notice
of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

P.L.B. GRAPHIQUE INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

James A. Ogilvy
James A. Ogilvy
Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2002-005

P.L.B. GRAPHIQUE INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

The appeal concerns a notice of decision dated February 8, 2002, which confirmed the determination that allowed a partial refund for overpaid federal sales tax, but disallowed the claim for the remaining amount sought by P.L.B. Graphique Inc. for federal sales tax paid on printed matter.

HELD: The appeal is dismissed. P.L.B. Graphique Inc. provided no evidence, such as invoices that indicated the amount of printed matter purchased by P.L.B. Graphique Inc., to substantiate its claim. The Tribunal is of the view that the onus was on P.L.B. Graphique Inc. to demonstrate the validity of its claim for the remaining tax allegedly paid in error.

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 20, 2002
Date of Decision: April 10, 2003

Tribunal Members: Pierre Gosselin, Presiding Member
Richard Lafontaine, Member
James A. Ogilvy, 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-2002-005

P.L.B. GRAPHIQUE INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
RICHARD LAFONTAINE, Member
JAMES A. OGILVY, Member

REASONS FOR DECISION

This appeal, made pursuant to section 81.19 of the *Excise Tax Act*,¹ raises the issue of whether P.L.B. Graphique Inc. (P.L.B.) is entitled to a refund of federal sales tax allegedly paid in error on printed matter under section 68. P.L.B. filed a refund application in the amount of \$63,274.38 for overpaid federal sales tax. On March 4, 1999, the Minister of National Revenue (the Minister) issued a notice of determination and allowed a partial claim in the amount of \$40,251.35, but disallowed the remainder of the claim for \$23,023.03. On April 26, 2000, P.L.B. served a notice of objection. On February 8, 2002, the Minister issued a notice of decision that confirmed the March 4, 1999, determination and indicated 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

P.L.B. submitted that, using its federal sales tax licence, it incorrectly purchased printed matter without paying the federal sales tax and, by error, remitted the federal sales tax on its resale price of the printed matter. It contended that its suppliers should have remitted the federal sales tax upon their sale of the printed matter to P.L.B. It also contended that, once it resold the printed matter, it should not have remitted the federal sales tax. Consequently, P.L.B. argued, it is entitled to a refund of the federal sales tax that it remitted on the sale of the printed matter. The Minister opposed the appeal on the grounds that P.L.B. had the onus to establish that it was entitled to the requested tax refund. Given that P.L.B.'s brief was stricken from the record and that P.L.B. was not allowed to present oral evidence, the Minister submitted, P.L.B. did not discharge its onus to establish that it was entitled to the tax refund. Consequently, the Minister argued, P.L.B. is not entitled to the refund, and the appeal should be dismissed.

1. R.S.C. 1985, c. E-15 [hereinafter Act].

DECISION

Preliminary Matter

On July 23, 2002, P.L.B. filed its brief. On August 20, 2002, the Minister wrote to the Tribunal, submitting that P.L.B.'s brief contained very few details and that it was therefore difficult for the Minister to prepare his brief, to fully understand the grounds raised and to provide the Tribunal with all the information needed to decide on the merits of the case. Moreover, P.L.B. 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 that he be allowed to conduct an "out-of-court" examination of a representative of P.L.B. and also requested an additional delay in filing his brief.

On August 26, 2002, the Tribunal decided that the *Canadian International Trade Tribunal Rules*² do not provide for "out-of-court" examinations of witnesses during the conduct of an appeal. It also ruled that P.L.B.'s brief was not sufficient to meet the requirements set out in rule 34. The Tribunal acknowledged the Minister's claim that P.L.B. intended to rely on oral evidence without providing information as to what the testimony was going to be. It directed P.L.B. to file, by September 20, 2002, an amended brief that fulfilled the requirements established by rule 34. The Tribunal indicated that, if the requirements were not fulfilled, P.L.B.'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, the Tribunal ruled, on September 30, 2002, that P.L.B.'s existing brief be stricken from the record and the case determined on the basis of the remainder of the record and without oral evidence from P.L.B. The Minister filed his brief on October 18, 2002.

In a letter dated November 6, 2002, the Minister requested that the Tribunal decide on the merits of the case based on the documents filed. He submitted that there was no need for an oral hearing, as P.L.B. would not be allowed to present oral evidence and he would not be calling any witnesses. On November 8, 2002, the Tribunal sought P.L.B.'s view. On November 11, 2002, P.L.B. advised that it had no objection to the appeal being disposed of by way of written representations, on the basis of the documents already filed with the Tribunal. The oral hearing was cancelled, and the Tribunal decided the matter based on the documents already filed.

Decision on the Merits

The Tribunal notes that the Minister had accepted P.L.B.'s original claim, in part, and had refunded approximately two thirds of the amount claimed. Therefore, the appeal concerns the remaining third of P.L.B.'s original claim.

P.L.B. only provided the Tribunal with an argument that the amount was paid in error and that it should receive a refund of \$23,023.23. It provided no evidence, such as invoices that indicated the amount of printed matter purchased by P.L.B., to substantiate its claim. The Tribunal finds that there is insufficient evidence to conclude that P.L.B. did pay the federal sales tax in error on printed matter and that it should be entitled to a refund pursuant to section 68 of the Act.

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

As in a previous decision,³ the Tribunal is of the view that the onus was on P.L.B. to demonstrate the validity of its claim for the remaining tax allegedly paid in error. The Tribunal finds insufficient evidence and no compelling argument in support of P.L.B.'s position that it should be refunded the remaining portion of its original claim. Therefore, the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

James A. Ogilvy
James A. Ogilvy
Member

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