



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2002-097

Pièces d'autos usagées RTA
(1986) inc.

v.

The Minister of National Revenue

*Decision and reasons issued
Wednesday, April 21, 2004*

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IN THE MATTER OF an appeal heard on October 29, 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 August 22, 2002, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

PIÈCES D'AUTOS USAGÉES RTA (1986) INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: October 29, 2003

Tribunal Members: James A. Ogilvy, Presiding Member
Zdenek Kvarda, Member
Meriel V. M. Bradford, Member

Counsel for the Tribunal: Eric Wildhaber

Clerk of the Tribunal: Margaret Fisher

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

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: (613) 993-4717
Fax: (613) 990-2439
E-mail: secretary@citt-tcce.gc.ca

REASONS FOR DECISION

BACKGROUND

1. This is an appeal under section 81.19 of the *Excise Tax Act*¹ from a determination of the Minister of National Revenue (the Minister).

2. Pièces d'autos usagées RTA (1986) inc. (Pièces d'autos) is claiming that it should be refunded the tax paid in error on air conditioners in vehicles imported between May 8, 1995, and May 15, 1997. The tax, in the amount of \$100 per air conditioner installed in each vehicle, was levied and collected in accordance with section 7 of Schedule I to the *Act*, which reads as follows:

Air conditioners designed for use in automobiles, station wagons, vans or trucks whether

(a) separate, or

(b) included as permanently installed equipment in an automobile, station wagon, van or truck at the time of sale or importation of the vehicle by the manufacturer or importer thereof, as the case may be, one hundred dollars

and, for purposes of this section and section 8, an evaporator unit designed for use with or as part of an automotive type air conditioning system shall be deemed to be an air conditioner described in this section except where the evaporator unit is used for repair or replacement purposes.

EVIDENCE

3. Mr. Raymond Burke, General Manager of Pièces d'autos, explained that the company buys damaged cars at auctions in the United States and imports them into Canada to be dismantled for parts and scrap. The parts, including components of the vehicles' air conditioning systems, are inventoried and sold piecemeal. What remains of the imported vehicles, the hulk, is sold as scrap metal, which is pressed, shredded and then recycled into new steel. Mr. Burke explained that Pièces d'autos tries to match its purchases at auctions with the foreseen demand for parts of vehicles of particular models and years.

4. Mr. Burke pointed to various certificates on file that state that the imported vehicles have been declared total losses ("salvage" or "unrebuildable" or "*irrécupérable*") by insurance companies, various U.S. states and the Société de l'assurance automobile du Québec;² as such, they have been declared not roadworthy, and their only use is for parts and scrap metal. According to Mr. Burke's submission, the air conditioners in the imported vehicles do not and will not function because the vehicles themselves no longer work and are prohibited from being put back on the road. Because they are imported to be dismantled as parts, and because they cannot be used to go from one place to another, Mr. Burke suggested that it is no longer accurate to describe them as "vehicles", even though various documents on file describe them generically as such. He stated that Pièces d'autos is not actually importing a "vehicle" in the true sense of the word, but simply a "package" or a "pile" of parts that are attached to an unusable vehicle rather than found in a box.

5. Mr. Burke indicated that some hulks sold for scrap may still contain air conditioners if those precise types of air conditioner are not in demand or if the units are too severely damaged to be reused. Mr. Burke explained how a typical automotive air conditioning unit functions, including its individual parts, and stated that such units are much more complicated than a household window unit. Even though the two types of air

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

2. Pièces d'autos's book of authorities and evidence, tabs 17, 23.

conditioners work on the same basic principle, their components and set-up are not the same. He stated that, for various reasons, including the fact that an automotive air conditioning unit is made specifically for a particular car model and often for a particular year, it is typically not feasible to reinstall all the parts and components of the unit of a particular car in another car. Rather, in almost all cases, it is only certain parts of the air conditioning unit of any particular salvaged car that will be removed for use in other vehicles. Mr. Burke stated that he did not believe that the air conditioners in issue were permanently installed in the imported vehicles precisely because each vehicle is acquired for the purpose of being dismantled for parts. He stated that it was not economically feasible for Pièces d'autos to remove the different components of an air conditioning unit from its host vehicle prior to importation in order to avoid paying the \$100 tax.

6. Mr. Burke testified that he objected to the payment of the tax because the imported vehicles are salvaged vehicles that were not imported to be driven in Canada. In his submission, he stated that having to pay the tax did not square with the fact that Parliament had adopted it as a measure to offset the increased environmental cost to society of cars with air conditioners that consume more gas than cars without air conditioners. Mr. Burke indicated that Pièces d'autos did not object to the payment of the tax when it imported a vehicle for repair and resale on the Canadian market. Mr. Burke indicated that the \$100 tax shows up in the sticker price of new cars with air conditioners.

ARGUMENT

7. Pièces d'autos submitted that section 7 of Schedule I to the *Act* sets out three conditions that give rise to the payment of the tax: (1) the air conditioners must be designed for use in the automobiles in which they are imported; (2) they must be permanently installed at the time of importation; and (3) the host in which they are found must indeed be a vehicle within the ordinary meaning of that word. It argued that the air conditioners in issue did not meet any of these requirements and that these criteria had to be assessed at the moment of importation of the goods in issue.³

8. With respect to the first condition, Pièces d'autos submitted that the air conditioners in issue were not taxable because they were in such a state as not to be able to function in the vehicles in which they were found at the moment of importation.

9. Pièces d'autos argued that, when enacting this tax, Parliament intended it to be a luxury tax or a disincentive to purchase automobiles with air conditioners, on the premise that such cars consume more gas than cars without air conditioners and, therefore, contribute to increased atmospheric pollution.⁴ Pièces d'autos alleged that the tax was intended to apply only to functioning vehicles equipped with functioning air conditioners at the time of importation.

10. Pièces d'autos submitted that Mr. Burke's evidence proves that the air conditioners in issue were not permanently installed in the vehicles at the time of their importation because it was always intended that what could be salvaged from them would be removed for parts. In light of this intention, Pièces d'autos argued that the air conditioners in issue did not meet the "longevity" requirement needed to be considered "permanently installed".⁵

3. In support of this proposition, Pièces d'autos cited *W.T. Hawkins Limited v. Deputy M.N.R.C.E.*, [1957] Ex. C.R. 152.

4. In support of this position, Pièces d'autos referred to excerpts from the House of Commons Debates. See Pièces d'autos's book of authorities and evidence, tab 3. On this matter, the Minister added that the objective of the tax was also as a source of additional revenue. See *Transcript of Public Argument*, 29 October 2003 at 31.

5. In support of this proposition, Pièces d'autos cited *Teknion Furniture Systems Inc. v. M.N.R.* (2 November 1994), AP-93-257 (CITT) and *Selenia Food Equipment Ltd. v. Deputy M.N.R.C.E.* (1988), 16 C.E.R. 98.

11. Pièces d'autos also argued that Mr. Burke's testimony shows that the imported vehicles were not "vehicles" in the ordinary meaning of the word. Pièces d'autos referred the Tribunal to the Federal Court's definition of "vehicle" in *Seaspan International Ltd. v. Canada*.⁶ In support of its position, Pièces d'autos also pointed to the fact that the vehicles entered Canada under a tariff item of Schedule I to the *Customs Tariff*⁷ that relates to parts (No. 8708.99.99) rather than under a tariff item that relates to vehicles (No. 8703.21.90).

12. The Minister submitted that section 7 of Schedule I to the *Act* does not require an air conditioner to be functional for it to be taxable and that Mr. Burke's testimony confirms that the air conditioners in issue were indeed designed for use in automobiles. The Minister also argued that the fact that Pièces d'autos intended to remove the air conditioners in issue from the imported vehicles is irrelevant to the Tribunal's determination of whether they are permanently installed in their hosts. Rather, in reaching a decision on that issue, he suggested that the Tribunal consider the fact that the air conditioners are bolted in place for the life of the vehicles to satisfy a need that is anything but transitory. The Minister further submitted that the imported vehicles are recognizable as cars or vehicles, irrespective of their physical condition or their customs tariff classification and that the Tribunal should give a broad meaning to the word "vehicle". The Minister noted that Pièces d'autos itself uses the word "vehicle" to describe the imports. The Minister further argued that, even if the Tribunal found that the imports were not vehicles, the air conditioners in issue would remain taxable pursuant to paragraph 7(a), and Pièces d'autos had a burden of proof with respect to each and every imported air conditioning unit.

DECISION

13. The Tribunal agrees with Pièces d'autos that section 7 of Schedule I to the *Act* sets out a three-part test, as described above, that must be met for the tax to be applicable; however, the Tribunal finds that Pièces d'autos's arguments on each of these three points fail to be persuasive.

14. With respect to the first part of the test, that the parts be "designed for use in automobiles, station wagons, vans or trucks", Pièces d'autos based its argument on actual use and the ability of the goods to function at the time of importation. The evidence shows that, in most cases, the air conditioning units were not functional because they depended on the functioning of the vehicles in which they were installed to enable them to run, or they were damaged in collision or by other means. Further, although the evidence indicated that, in certain instances, some components of the air conditioning units were capable of functioning,⁸ it is not possible to determine from the evidence the precise condition of the great majority of the units. However, it is the Tribunal's view that this part of the test does not turn on whether they were functional or actually in use in automobiles, station wagons, vans or trucks at the time of importation, but rather on whether they were designed for this use. The evidence distinguishes these units from other air conditioners, for example, those used in household window installations. The Tribunal is convinced that the evidence clearly indicates that the air conditioners in issue were designed specifically for use in automobiles, stations wagons, vans or trucks and that they are not suitable for any other application.

15. The Tribunal is also convinced that the evidence shows that the air conditioners in issue were "permanently installed" in vehicles, thereby meeting the second part of the test. Pièces d'autos testified to the difficulty of removing a whole air conditioning unit and installing it in another vehicle, noting that a

6. [1994] 1 F.C. 524.

7. R.S.C. 1985 (3rd Supp.), c. 41.

8. For example, they were occasionally sold as replacement parts. See Pièces d'autos's book of authorities and evidence, tab 18, unnumbered pages 13, 20.

vehicle is made either with an air conditioner or without one and that a vehicle made with an air conditioner contains parts that are not in a vehicle without an air conditioner. In the Tribunal's view, the mere fact that air conditioners *can* be removed does not differentiate them from other "permanently installed" goods. In assessing this issue, the Tribunal found compelling the fact that the goods were designed and installed for the life of the vehicles, which is a clear indication of the permanence of their installation.⁹

16. Finally, the Tribunal is of the view that the host items in which the air conditioners are imported are vehicles. Paragraph 7(b) of Schedule I to the *Act* uses the term "vehicle" synonymously with "automobile, station wagon, van or truck". It is the Tribunal's view that "automobiles, station wagons, vans or trucks" remain identifiable by these terms, even if they have been disabled and can no longer function as conveyances. Given that these terms are used synonymously with the term "vehicle", the Tribunal views "vehicles" in the same light. In argument, the Minister pointed to documents on the record that describe disabled automobiles as vehicles.¹⁰ The Tribunal notes that, although the invoices may contain modifiers to describe the imported vehicles, such as "damaged vehicle" or "*automobile accidentée pour pièces*" (damaged automobile for parts), the terms "vehicle" and "automobile" tend to be common to them. In the Tribunal's view, both common parlance and the language used in the industry include damaged automobiles in the term "vehicle", and a vehicle does not cease to be a vehicle in the plain and ordinary sense of that term when it is no longer functional.

17. For the foregoing reasons, the Tribunal concludes that the air conditioners in issue satisfy all three parts of the test set out in paragraph 7(b) of Schedule I to the *Act* and are therefore taxable. Accordingly, the appeal is dismissed.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

9. *Transcript of Public Hearing*, 29 October 2003 at 41, 52, 58.

10. *Transcript of Public Argument*, 29 October 2003 at 27; Pièces d'autos's book of authorities and evidence, tabs 16, 17.