



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

---

## DECISION AND REASONS

Appeal No. AP-2004-019

Diamond Conversions Inc.

v.

Minister of National Revenue

*Decision and reasons issued  
Thursday, September 21, 2006*

**TABLE OF CONTENTS**

DECISION.....i  
STATEMENT OF REASONS .....1  
    ARGUMENT .....2  
    DECISION .....2

IN THE MATTER OF an appeal heard on February 14, March 16 and June 1, 2006, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF 21 decisions of the Minister of National Revenue dated June 17, 2004, with respect to objections to determinations of the Minister of National Revenue under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**DIAMOND CONVERSIONS INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION**

The appeal is dismissed.

James A. Ogilvy  
James A. Ogilvy  
Presiding Member

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

Elaine Feldman  
Elaine Feldman  
Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: February 14, March 16 and June 1, 2006

Tribunal Members: James A. Ogilvy, Presiding Member  
Meriel V. M. Bradford, Member  
Elaine Feldman, Member

Counsel for the Tribunal: Eric Wildhaber  
Ian Bradley

Registrar Officers: Jo-Anne Smith  
Valérie Cannavino

Appearances: Richard C. Williams, for the appellant  
Alexandre Kaufman, 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: 613-993-3595  
Fax: 613-990-2439  
E-mail: [secretary@citt-tcce.gc.ca](mailto:secretary@citt-tcce.gc.ca)

## STATEMENT OF REASONS

1. This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> from decisions of the Minister of National Revenue (the Minister) dated June 17, 2004, with respect to objections to determinations of the Minister under section 81.17 of the *Act*.

2. The decisions disallowed, pursuant to section 68.1 of the *Act*, various refund claims made by Diamond Conversions Inc. (Diamond Conversions) in respect of the excise tax paid on air conditioners.<sup>2</sup>

3. Section 68.1 of the *Act* provides as follows:

68.1 (1) Where tax under this Act has been paid in respect of any goods and a person has, in accordance with regulations made 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 if that person applies therefor within two years after the export of the goods.

...

68.1 (1) Lorsque la taxe prévue par la présente loi a été payée sur des marchandises qu'une personne a exportées du Canada en conformité avec les règlements pris par le ministre, un montant égal à cette taxe est, sous réserve des autres dispositions de la présente partie, payé à la personne si elle en fait la demande dans les deux ans suivant l'exportation des marchandises.

[...]

4. The issue in this appeal is whether Diamond Conversions is entitled to a refund of excise tax for those claims that were disallowed.

5. Diamond Conversions is involved in the modification of passenger vehicles, including the installation of air conditioners in modified recreational vehicles, and the subsequent export of these modified vehicles to the United States. It also performs work for companies which export such modified vehicles to the United States.

6. On June 26, 2001, Diamond Conversions applied for a refund of excise tax paid on the air conditioners installed in the modified vehicles on the basis that these air conditioners were exported and that it therefore should be entitled to an excise tax refund.

7. On February 4, 2002, the Minister issued notices of determination denying 21 applications for refund in accordance with subsection 68.1(1) of the *Act* on the following grounds: (1) that Diamond Conversions was not the actual exporter of the goods and therefore not entitled to a refund; and/or (2) that there was insufficient documentation to support the claims.

8. On July 18, 2002, Diamond Conversions re-filed the same 21 refund applications and attached to them powers of attorney that, in its view, would have authorized it to claim various excise tax refunds. Several of these applications were denied on the basis that they were filed beyond the two-year statutory time frame provided under subsection 68.1(1) of the *Act*. The remaining applications were denied on the basis that they were without supporting documentation.

---

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

2. Pursuant to section 7 of Schedule I to the *Act*, air conditioners designed for use in automobiles, station wagons, vans or trucks are subject to excise tax under Part III of the *Act*.

9. Diamond Conversions then failed to object to those notices of determination on time, but obtained an order from the Tribunal, pursuant to section 81.32 of the *Act*, dated April 9, 2003, extending to June 9, 2003, the time to do so. It then filed notices of objection.

10. On June 17, 2004, by notices of decision, the Minister disallowed each of the notices of objection on the grounds that Diamond Conversions was not the actual exporter of the goods and that the powers of attorney that it submitted along with its claims did not give it the right to receive refunds for exports made by AJB International Inc., Fujichu USA, Inc., Mitsuoka Motors America, Inc. and Universal Projects Inc. (the exporters).

11. At the request of the parties, the Tribunal heard this matter by way of written submissions pursuant to rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*.<sup>3</sup> A notice to this effect was published in the January 14, 2006, edition of the *Canada Gazette*.<sup>4</sup>

## ARGUMENT

12. Diamond Conversions argued that it is entitled to claim a refund of the excise tax paid by the exporters because they authorized it to do so by way of power of attorney.

13. The Minister argued that section 68.1 of the *Act* provides that only the person who paid for the goods and exported them from Canada is entitled to a refund and that Diamond Conversions did neither. Further, the Minister argued that, since certain refunds belong to the exporters, only they can claim them. The Minister also pointed to section 67 of the *Financial Administration Act*<sup>5</sup> which precludes the assignment of a Crown debt, except in the manner prescribed by section 69 of the *FAA*. The Minister indicated that various other refund applications were denied on the basis that they were statute-barred under subsection 68.1 (1) of the *Act*, as they were outside the two-year limitation period, which cannot be extended.

14. The Minister also argued that any alleged representations made by officials of the Canada Customs and Revenue Agency are irrelevant, as the Crown cannot be estopped from applying the proper interpretation of a statute, even where this may contradict representations made by government officials.<sup>6</sup>

## DECISION

15. The Tribunal considers the evidence and argument presented by Diamond Conversions to be insufficient for it to conclude that the decisions of the Minister should be reversed or altered.

16. On February 14, 2006, the Tribunal first convened to examine the materials filed by the parties, including the 21 decisions dated June 17, 2004. The Tribunal examined the file in detail, making every effort to understand the parties' positions, but decided to suspend its proceedings and to write to the parties, which it did on March 16, 2006, to request further submissions in order to clarify and, if necessary, to augment the material on the record.

---

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

4. Can. Gaz. 2006.I.110.

5. R.S.C. 1985, c. F-11 (*FAA*).

6. In support of this assertion, the Minister cited *McCague v. Canada (Minister of National Defence)*, [2001] 4 F.C. 387.

17. The responses from the parties assisted the Tribunal, to some degree, in its understanding of the evidence regarding the transactions at issue, but much of the information remained incomplete and the nature of the transactions unclear. What was established is that the amount in dispute was \$10,920. Of that amount, Diamond Conversions claimed \$8,220 for excise tax payments originally made by it. The balance of the amount in dispute, or \$2,700 (i.e. \$10,900 - \$8,220), represented refund claims that Diamond Conversions made with respect to excise tax payments originally made by three other exporters, namely, AJB International Inc. (\$200), Mitsuoaka Motors America Inc. (\$1,900) and Universal Projects Inc. (\$600).

18. In the Tribunal's view, Diamond Conversions failed to establish a relationship in which it would be an agent acting on behalf of the exporters for which it claimed a refund.

19. The *Act* does not permit the assignment of rights to another party or the assumption of rights from another party, even with a power of attorney. As argued by the Minister, the Tribunal notes that the *FAA* provides for the manner in which a Crown debt can be assigned and that Diamond Conversions did not provide evidence of its right to the claims that it is making in accordance with the *FAA*.<sup>7</sup> The Tribunal therefore finds that Diamond Conversions was not entitled to file refund applications in its own name if they properly should have been filed by the exporters.

20. Further, although the information allegedly given to Diamond Conversions by the Minister was incorrect, incorrect information and reliance on such incorrect information does not give rise to any right by Diamond Conversions to file, in its own name, claims for refunds payable to the exporters.

21. The Tribunal therefore denies the claims made by Diamond Conversions with respect to any funds originally remitted by the exporters.

22. Having dealt with the claims relating to the exporters, the Tribunal finds that any remaining claims made by Diamond Conversions on its own behalf lack evidentiary support. There is insufficient documentation on the record, in support of its claim of vehicle ownership in particular, to serve as a basis for awarding refunds of any payments made by Diamond Conversions in its own name.

23. For the foregoing reasons, the appeal is dismissed.

James A. Ogilvy  
James A. Ogilvy  
Presiding Member

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

Elaine Feldman  
Elaine Feldman  
Member

---

7. Respondent's brief, paras. 18-19.