



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2007-024

1068827 Ontario Inc. o/a Grace
Motors

v.

Minister of National Revenue

*Decision and reasons issued
Thursday, September 11, 2008*

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IN THE MATTER OF an appeal heard on July 3, 2008, 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 October 25, 2007, with regard to a notice of objection under section 81.17 of the *Excise Tax Act*.

BETWEEN

1068827 ONTARIO INC. O/A GRACE MOTORS

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION

The appeal is dismissed.

Ellen Fry
Ellen Fry
Presiding Member

Diane Vincent
Diane Vincent
Member

Pasquale Michael Saroli
Pasquale Michael Saroli
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: July 3, 2008

Tribunal Members: Ellen Fry, Presiding Member
Diane Vincent, Member
Pasquale Michael Saroli, Member

Counsel for the Tribunal: Jidé Afolabi

Manager, Registrar Office: Gillian Burnett

Registrar Officer: Stéphanie Doré

PARTICIPANTS:

Appellant	Counsel/Representative
1068827 Ontario Inc. o/a Grace Motors	John Vink
Respondent	Counsel/Representative
Minister of National Revenue	Sharon Johnston

WITNESS:

John Vink
President
1068827 Ontario Inc. o/a Grace Motors

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal under section 81.19 of the *Excise Tax Act*¹ from a decision of the Minister of National Revenue (the Minister), dated October 27, 2007, under section 81.17 of the *Act*.

2. The issue in this appeal is whether excise tax is exigible on used motor vehicles equipped with air conditioning units that are imported into Canada, as submitted by the Minister, or whether the excise tax is limited to importations of new motor vehicles equipped with air conditioning units, as submitted by 1068827 Ontario Inc. o/a Grace Motors (Grace Motors). A finding in favour of Grace Motors' submission would entitle it to a refund of excise tax imposed by the Minister and paid by it pursuant to section 23 and Schedule I to the *Act*, for the period from April 1, 2005, to April 30, 2006.

PROCEDURAL HISTORY

3. Subsequent to the importation of the goods in issue and the imposition of the excise tax by the Minister, Grace Motors requested a refund on April 1, 2007. Grace Motors indicated that the goods in issue were used motor vehicles to which the imposed excise tax does not apply, as opposed to new motor vehicles to which the imposed excise tax would have applied.

4. On April 27, 2007, the Minister issued a notice of determination disallowing the refund requested. On May 9, 2007, Grace Motors filed a notice of objection with regard to the notice of determination. On October 25, 2007, the Minister disallowed Grace Motors' objection and confirmed the determination of April 27, 2007. On January 14, 2008, Grace Motors filed its appeal with the Tribunal.

LEGISLATIVE PROVISIONS

5. The Minister has asserted the relevancy of subsection 23(1) of the *Act*, as well as section 7 of Schedule I, with regard to the facts of this appeal. Those provisions state as follows:

23. (1) Subject to subsections (6) to (8), whenever goods mentioned in Schedule I are imported or are manufactured or produced in Canada and delivered to a purchaser of those goods, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this or any other law, an excise tax in respect of the goods at the applicable rate set out in the applicable section of that Schedule, computed, if that rate is specified as a percentage, on the duty paid value or the sale price, as the case may be.

7. 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

6. Thus, subsection 23(1) of the *Act* makes clear that, whenever the goods mentioned in Schedule I either are imported or are manufactured or produced in Canada, an excise tax shall be imposed, levied and collected at the rate set out in that schedule. The rate applicable to air conditioners designed for use in vehicles is set by section 7 of that schedule at \$100.

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

7. Subsection 23(2) of the *Act* goes on to indicate the point at which the excise tax on such goods would be payable, as well as who would be liable for payment of the tax. The provision states as follows:

(2) Where goods are imported, the excise tax imposed by subsection (1) shall be paid in accordance with the provisions of the *Customs Act* by the importer, owner or other person liable to pay duties under that Act, and where goods are manufactured or produced and sold in Canada, the excise tax shall be payable by the manufacturer or producer at the time of delivery of the goods to the purchaser thereof.

8. Thus, in instances where such goods are imported, the excise tax is payable, in accordance with the provisions of the *Customs Act*,² at the time of importation, by the importer, owner or other person liable to pay duties.³ In instances where such goods are manufactured or produced in Canada, the excise tax is payable by the manufacturer or producer at the time of delivery of the goods to the purchaser.

9. The *Act* outlines a number of exemptions from the payment of the excise tax imposed under subsection 23(1) of the *Act*. Subsections 23(6) to (8) outline the general instances in which the goods enumerated in Schedule I may be imported or manufactured or produced in Canada without a resulting liability for excise tax. In particular, subsection 23(6) exempts such goods if purchased or imported by a licensed wholesaler for resale; subsection 23(7) exempts such goods if purchased or imported by a licensed manufacturer to be used in the production of goods subject to the tax, as well as if they are new vehicles sold to a licensed manufacturer engaged in wholesaling; and subsection 23(8) exempts such goods in a number of instances that include purchase or importation for resale at a duty-free shop, for public exhibit and for personal use, if tobacco.

10. In addition to the exemptions described above, section 8 of Schedule I to the *Act* excludes the application of the excise tax otherwise imposed by section 7 of Schedule I in a number of instances. Thus, the excise tax is not to be imposed, levied or collected if the imported or manufactured vehicle with air conditioner installed is an ambulance or a hearse, is sold under conditions that would qualify as a zero-rated supply pursuant to the goods and services tax provisions of the *Act*, or is for diplomatic use.

11. In summary, subsections 23(1) and (2) of the *Act* impose an excise tax and indicate the point at which the tax is payable, as well as the party liable for payment of same, with certain specific exemptions and exclusions from liability granted under subsections 23(6) to (8) and section 8 of Schedule I. Section 7 of Schedule I makes the excise tax so imposed applicable to air conditioners designed for use in vehicles at a rate of \$100.

12. Grace Motors has asserted the relevancy of subsection 2(4.1) of the *Act* with regard to the facts of this appeal. That provision states as follows:

(4.1) For the purposes of this Act, a person who is a manufacturer or producer within the meaning of paragraph (g) of the definition of that term in subsection (1), other than a member of a class of small manufacturer or producer that is exempted by virtue of regulations made under subsection 54(2) from the requirement of subsection 54(1) to apply for a licence, and who imports new motor vehicles designed for highway use, or chassis therefor, into Canada shall be deemed to be the manufacturer or producer in Canada thereof and not the importer thereof and the vehicles or chassis shall be deemed to be goods produced or manufactured in Canada and not imported goods.

2. R.S.C. 1985 (2d Supp.), c. 1.

3. In this regard, subsection 17(1) of the *Customs Act* states that “[i]mported goods are charged with duties thereon from the time of importation thereof until such time as the duties are paid or the charge is otherwise removed.” [Emphasis added].

13. Paragraph (g) of the definition of the term “manufacturer or producer” under subsection 2(1) of the *Act* includes “any person who imports into Canada new motor vehicles designed for highway use, or chassis therefor”. In short, subsection 2(4.1) operates as a deeming provision that allows a certain class of importers of new vehicles to be deemed manufacturers or producers in Canada and the goods that they import to be deemed goods manufactured or produced in Canada.

ARGUMENT

14. Grace Motors submitted that liability for the excise tax imposed through the operation of subsections 23(1) and (2) of the *Act* is, in the case of vehicles, limited to importations of new vehicles equipped with air conditioners, by virtue of subsection 2(4.1). In this regard, Grace Motors argued that subsection 2(4.1) makes importers of new vehicles, which are deemed to be Canadian manufacturers or producers, the category of persons liable for the payment of excise tax, thereby excluding importers of used vehicles.

15. In support of its argument, Grace Motors filed a letter dated June 9, 2008, sent by the Canada Revenue Agency (the CRA) concerning the granting of a refund with regard to used vehicles equipped with air conditioners imported by Grace Motors that are not at issue. Grace Motors has interpreted the letter as an agreement by the Minister with Grace Motors’ position that the excise tax is not to be applied on used vehicles imported into Canada.

16. Grace Motors and the Minister both agreed that Grace Motors is not a licensed wholesaler and, thus, would not qualify for the exemption available pursuant to subsection 23(6) of the *Act*, as outlined above. Thus, subsection 2(4.1) represents the sole basis of Grace Motors’ argument in support of its appeal before the Tribunal.

17. The Minister submitted that subsection 23(1) of the *Act*, in conjunction with section 7 of Schedule I, imposes an excise tax on air conditioners installed in vehicles, without distinction between new and used vehicles. In this regard, the Minister asserted that “. . . [a]ll motor vehicles being imported into Canada for the first time, equipped with air conditioning units, are subject to the excise tax, whether the vehicles are new or used”⁴

18. The Minister further submitted that subsection 23(2) of the *Act* refers to the points at which the tax is payable, as well as to the parties liable for payment of same, with the importer clearly included as such a party.

DECISION

19. The sole issue in this appeal is whether the excise tax imposed by the Minister, pursuant to the combined operation of subsections 23(1) and (2) of the *Act* and section 7 of Schedule I, is exigible on used motor vehicles equipped with air conditioners that are imported into Canada.

20. The Tribunal agrees with the Minister’s reading of the legislation and, in this regard, was unable to find anything in the wording of the specific legislative provisions or in their context to support the interpretation that air conditioners installed in used vehicles are exempt from liability for excise tax. In this regard, the Tribunal notes that the relevant provisions do not distinguish between new and used vehicles and that Grace Motors has not argued that the exemptions or exclusions, as summarized above, apply in this

4. Respondent’s brief, para. 22.

case. Further, subsection 23(2) of the *Act* is clear in making the excise tax payable “. . . in accordance with the provisions of the *Customs Act* by the importer . . .”, and the *Customs Act* is clear in requiring payment “. . . from the time of importation”

21. The Tribunal finds that subsection 2(4.1) of the *Act*, being a provision that deems a certain class of importers of new vehicles to be manufacturers or producers in Canada and the goods that they import to be goods manufactured or produced in Canada, merely defers the imposition of excise tax from the time of importation to the time of delivery to the purchaser and, read in the context of the *Act*, does not operate to limit the application of the tax solely to air conditioners installed in new vehicles. In this regard, “new motor vehicles” are clearly a subset of “automobiles” generally, and section 7 of Schedule I makes the excise tax payable on air conditioners installed in automobiles.

22. The Tribunal’s attention was drawn to a letter entered into evidence by Grace Motors, dated June 9, 2008, which was sent by the CRA to Grace Motors. In it, the CRA indicated approval of Grace Motors’ refund application with regard to the excise tax paid on air conditioners installed in used automobiles with respect to certain importations that are not at issue. The CRA’s position in that letter appears to be inconsistent with its position in this case. The Tribunal’s statutory responsibility is to determine whether the CRA was correct in imposing excise tax concerning the importations at issue. Although, in making this determination, it would not be appropriate for the Tribunal to take into account decisions by the CRA concerning other similar importations, the Tribunal notes that the CRA’s letter appears to have encouraged Grace Motors in an incorrect reading of the complexities of the *Act*.

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

Ellen Fry
Ellen Fry
Presiding Member

Diane Vincent
Diane Vincent
Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member