

Ottawa, Monday, June 8, 1992

Appeal No. AP-90-144

IN THE MATTER OF an appeal heard on March 15, 1992,
under section 81.19 of the *Excise Tax Act*, R.S.C., 1985,
c. E-15, as amended;

AND IN THE MATTER OF a decision of the Minister of
National Revenue dated September 17, 1990, with respect to
a notice of objection served under section 81.15 of the
Excise Tax Act.

BETWEEN

AVIATION LECLERC INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Michèle Blouin
Michèle Blouin
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-144

AVIATION LECLERC INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant, Aviation Leclerc Inc., is an aviation company licensed by the National Transportation Agency of Canada to operate a specialized commercial air service. On October 20, 1989, the appellant was assessed \$3,832.80, including tax, interest and penalty, on the basis that it should not have been paid a refund of the excise tax on aviation gasoline. The issue is to determine whether, under paragraph 68.16(2)(a) of the Excise Tax Act, the appellant is entitled to the excise tax refund paid with respect to aviation gasoline purchased for public air transportation of passengers.

HELD: *The appeal is dismissed. The appellant provided neither evidence nor argument that would allow the Tribunal to conclude that the assessment was not valid and that part of the appellant's activities qualified for the refund of the excise tax paid on aviation gasoline in accordance with paragraph 68.16(2)(a) of the Excise Tax Act.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: May 15, 1992

Date of Decision: June 8, 1992

Tribunal Members: Arthur B. Trudeau, Presiding Member

W. Roy Hines, Member

Michèle Blouin, Member

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Dyna Côté

Appearance: Dominique Gagné, for the respondent

Appeal No. AP-90-144

AVIATION LECLERC INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
W. ROY HINES, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) concerning an assessment confirmed in part by the Minister of National Revenue (the Minister).

The appellant, Aviation Leclerc Inc., is an aviation company licensed by the National Transportation Agency of Canada to operate a specialized commercial air service, involving flight training, air surveillance, recreational flying, aerial photogrammetry, aerial product application and distribution, inspection, reconnaissance and aerial advertising, as well as non-technical aerial photography.

In the fall of 1988, the appellant applied for an excise tax refund of \$3,279.56 which was approved in part for the period from August 1 to August 31, 1988. However, on October 20, 1989, an assessment of \$3,832.80, including tax, interest and penalty, was made against the appellant on the basis that the excise tax refund on aviation gasoline should not have been paid to the appellant for the above-mentioned period.

On January 17, 1990, the appellant opposed the assessment claiming that its activities, in the aviation field, complied with the provisions of subsection 44.16(2) (now subsection 68.16(2)) of the Act.

On September 17, 1990, the opposition was allowed in part and the assessment was amended to reflect the fact that the appellant had, at times, leased its aircraft and transported passengers. The remainder of the assessment was confirmed on the basis that the appellant's main activity during the period in question was providing flying instruction, an activity that does not entitle it to an excise tax refund. On November 30, 1990, this decision was appealed to the Tribunal.

The issue is to determine whether, under paragraph 68.16(2)(a) of the Act, the appellant is entitled to the excise tax refund paid with respect to aviation gasoline purchased for the public air transportation of passengers.

1. R.S.C., 1985, c. E-15, as amended.

The appellant did not submit a brief and did not appear at the hearing, but in its notice of appeal filed on November 30, 1990, its president claims that its former students remain clients of Aviation Leclerc Inc. after obtaining their licence and lease aircraft from the company to transport friends to various locations. According to its notice of objection, the appellant therefore believes that it is entitled to the refund of excise tax paid on aviation gasoline in accordance with paragraph 68.16(2)(a) of the Act.

The respondent claims, with respect to the part of the assessment confirmed by the Minister, that the aviation gasoline was not purchased " ... for the public air transportation of passengers ... " within the meaning of paragraph 68.16(2)(a) of the Act. According to counsel for the respondent, this expression designates transportation available upon request for a fee or some other type of remuneration, while in this instance, the respondent claims that the aviation gasoline was used for recreational purposes, for flying lessons and for the leasing of aircraft by students, activities which do not give entitlement to the refund of the tax paid.

The appellant did not provide any evidence or argument that would allow the Tribunal to conclude that the assessment was incorrect and that a part of the appellant's activities qualified for the refund of the tax paid on the aviation gasoline in accordance with paragraph 68.16(2)(a) of the Act. Consequently, the Tribunal must dismiss the appeal.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

W. Roy Hines

W. Roy Hines
Member

Michèle Blouin

Michèle Blouin
Member