



Ottawa, Wednesday, November 10, 1993

Appeal No. AP-92-030

IN THE MATTER OF an appeal heard on May 18, 1993,
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 March 31, 1992, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

ORLY AUTOMOBILE INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-030

ORLY AUTOMOBILE INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

On January 1, 1991, the appellant had an inventory of goods such as roofing materials, trim edged mouldings, trim clips, stripe material, glue, cleaning materials, etc., and, having paid federal sales tax on them, applied for a refund of the tax in the amount of \$4,046.27 under section 120 of the Excise Tax Act. The respondent approved only \$335.87 of the claim, leaving a balance of \$3,710.40. The issue in this appeal is whether the appellant is entitled to the balance in accordance with section 120 of the Excise Tax Act.

***HELD:** The appeal is dismissed. The Tribunal did not have the benefit of any evidence submitted by the appellant in the furtherance of its case. As such, there was not sufficient evidence to substantiate the appellant's claim.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: May 18, 1993
Date of Decision: November 10, 1993*

*Tribunal Members: Kathleen E. Macmillan, Presiding Member
Michèle Blouin, Member
Charles A. Gracey, Member*

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Janet Rumball

Appeal No. AP-92-030

ORLY AUTOMOBILE INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member
MICHÈLE BLOUIN, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of a determination of the Minister of National Revenue. The Tribunal disposed of the matter on the basis of its record as supplemented by a brief and affidavit submitted by the respondent. The issue in this appeal is whether the appellant is entitled to a federal sales tax (FST) inventory rebate in accordance with section 120² of the Act.

On March 3, 1993, the Tribunal ordered the appellant, Orly Automobile Inc., to file its brief by March 18, 1993, after which the respondent would have 60 days to file a response. It was further ordered that, upon failure by the appellant to comply with the order, the Tribunal would dispose of the matter on the basis of the written documents before it, subject to a request by the respondent for a hearing. The order was made subsequent to two requests by the respondent for a postponement of the hearing due to the appellant's failure to file a brief and to one extension of time granted to the appellant to file its brief. The appellant failed to comply with the order and, on May 3, 1993, the respondent filed its brief supported by an affidavit of an auditor of the Department of National Revenue (Revenue Canada). No hearing was requested by the respondent.

During 1986 and 1987, the appellant was in the business of installing car roofing kits. The appellant invoiced its clients on an all-inclusive basis, the materials and labour supplied not being invoiced separately. Most installations were made on new cars, the appellant's clientele being comprised of car dealers. On January 1, 1991, the appellant had an inventory of goods such as roofing materials, trim edged mouldings, trim clips, stripe material, glue, cleaning materials, etc., and, having paid FST on them, applied for a refund of the tax in the amount of \$4,046.27 under section 120 of the Act. The respondent approved only \$335.87 of the claim, leaving a balance of \$3,710.40, which was in issue in this appeal.

The application was disallowed by Revenue Canada on the basis that the goods were not items of inventory as defined in the Act, but were goods consumed in the performance of a service contract. In argument, counsel for the respondent further contended that, as the appellant changed its business activities in 1988, it was no longer installing car roofing kits in

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1. R.S.C. 1985, c. E-15.
 2. S.C. 1990, c. 45, s. 12.

the ordinary course of its business. Also, since the appellant failed to file a brief and to lead evidence, it had not discharged its burden of proof.

After considering the evidence on file, the Tribunal disagrees with the respondent's assertion that all the goods in issue are merely consumed in the performance of a service contract. However, the Tribunal did not have the benefit of any evidence submitted by the appellant in the furtherance of its case. As such, there was not sufficient evidence to substantiate the appellant's claim.

Accordingly, the appeal is dismissed.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Charles A. Gracey
Charles A. Gracey
Member