

Citation: 2007TCC400
Court file No.: 2002-795(GST)G

BETWEEN:

AUTOMOBILES CAMTEK-ER LTÉE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**EDITED TRANSCRIPT OF THE
REASONS FOR JUDGMENT**

Attached is an edited version of the transcript of the Reasons for Judgment delivered orally from the Bench at Montréal, Québec, on April 13, 2007. The original transcript was certified by Jean Riopel, Official Court Reporter. I have edited that transcript for typos, spelling, style, punctuation and grammar. I have also made minor changes and additions to improve the clarity.

Signed at Ottawa, Canada, this 11th day of July 2007.

"Gaston Jorré"

Jorré, J.

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Court file No.: 2002-795(GST)G

TAX COURT OF CANADA
Re: the *Excise Tax Act*

BETWEEN:

AUTOMOBILES CAMTEK-ER LTÉE,
Appellant,

and

HER MAJESTY THE QUEEN,
Respondent.

REASONS FOR JUDGMENT DELIVERED
ORALLY FROM THE BENCH BY JUSTICE GASTON JORRÉ
in the Courts Administration Service Building,
30 McGill Street, Montréal, Québec
on Friday, April 13, 2007 at 15:30

APPEARANCES:

Mr. Mamdouh Mansour Agent for the Appellant

Mr. Alain-François Meunier Counsel for the Respondent

ALSO PRESENT:

Ms. Nicole Champagne Court Registrar

RIOPEL, GAGNON, LAROSE & ASSOCIÉS
215 Saint-Jacques Street, Room 328
Montréal, Québec H2Y 1M6
(514) 286-5454

JEAN RIOPEL, o.c.r.

REASONS FOR JUDGMENT

(Edited from the transcript of the Reasons delivered orally from the Bench
at Montréal, Québec on April 13, 2007)

JUSTICE JORRÉ: These are my reasons for

judgment in the appeal of Automobiles Camtek-ER Limitée against
Her Majesty the Queen, appeal number 2002-795(GST)G.

This is an appeal from a GST assessment dated
12 December 2000 bearing number 0319269 and covering the period
from 1 October 1996 to 31 August 1999.

Pursuant to this assessment, there was an
upward adjustment of \$32,285.75 plus penalty and interest thereon
pursuant to section 280 of the *Excise Tax Act*. The Minister's
adjustments in the reassessment were in two parts. First, there
was an amount of output tax of \$7,434.98 that was reported by the
taxpayer but not entered into the Respondent's data system. This
was in respect of the months of June, July and August 1999.

Secondly, the assessment of 12 December 2000 reduced the input
tax credit claims by an amount of \$24,850.77.

The first issue can be disposed of very
rapidly. The amount of \$7,434.98 is simply the sum of the output
tax, the GST collected on sales, that was reported by the
Appellant in its returns for the three months in box 105. These
returns are in exhibit R-9 at pages 4.55, 4.56 and 4.57. Nothing
in the evidence has persuaded me that the sales, or the GST
collected, in those three months were anything less than what was
shown in boxes 101 and 105 respectively of the those three pages.
The comments I shall make later with respect to the evidence are

1 equally applicable here.

2 Turning to the second issue, I should note
3 that the Respondent at the opening of the hearing made a
4 concession that a mathematical error was made and that there
5 should be a reduction in the quantum of investment tax credits
6 disallowed, I will return to this at end of my judgment.

7 The Appellant is in the business of selling
8 damaged cars that have been repaired. The Appellant's
9 representative, Mr. Mansour, testified on behalf of the
10 Appellant. Mr. Mansour testified that he owns the Appellant
11 company and he is its director and president; he also testified
12 that he owned, was director of and president of Automobiles
13 Noratel Limitée. We shall return to Automobiles Noratel shortly.

14 I note that exhibit R-10 shows Linda Meadus,
15 or Linda Mansour, Mr. Mansour's spouse, as owner and director of
16 the company, however, nothing turns on whether it was Mr. or
17 Mrs. Mansour who owned the Appellant.

18 The Appellant company was late in filing its
19 GST returns and filed the 28 GST returns covering the period from
20 1 May 1997 to 31 August 1999 in September 1999.

21 When the Appellant was audited, the company
22 did not have any accounting books or records; it simply produced
23 documents such as invoices, sales contracts or cheques.

24 Mr. Mansour testified that he was responsible
25 for the tax matters of both the Appellant and Automobiles
26 Noratel. He explained that there was the following relationship

1 between the Appellant and Automobiles Noratel.

2 The Appellant is not a conventional used car
3 sales company, it sells damaged cars that are rebuilt. The
4 Appellant would buy the damaged cars, Noratel would repair the
5 cars and would purchase parts needed for the repairs. In fact,
6 Mr. Mansour testified that he filed the GST returns as if the
7 purchases by Noratel were purchases by the Appellant.

8 The Respondent called Mrs. Corbière, an
9 auditor of Revenue Québec. Mrs. Corbière took over the file from
10 Mr. Groulx who left the department. She verified the months where
11 net tax was shown as payable. In the returns, monsieur Groulx had
12 already verified months for which there was a net tax refund
13 claimed. Her report is in exhibit R-4 and exhibit R-5 sets out
14 her adjustments. She testified that, in the absence of books and
15 records, she examined the various documents provided by the
16 Appellant. When there were invoices to the Appellant, she
17 accepted that the Appellant was entitled to an investment tax
18 credit; where the invoice was to anyone else, she rejected any
19 investment tax credit claimed by the Appellant.

20 The net results are set out in pages 1 and 2
21 of exhibit R-5. On page 2, the net amount due of \$41,314.94,
22 which amount represents the adjustment of Input Tax Credits
23 ("ITCs") plus interest plus penalty, corresponds with the box
24 "net amount due" on exhibit R-1. She also testified that prior to
25 her work, Mr. Groulx had disallowed approximately \$22,000 of
26 input tax credits claimed for the months he examined, the months

1 where a net tax refund was claimed.

2 Mr. Mansour in testimony filed exhibits A-1,
3 A-2 and A-3 in support of his claim that the assessment is in
4 error. In A-1 and A-3, there are summary sheets setting out
5 sales, purchases, GST collected and GST paid as well as net GST.
6 He says that these sheets set out the GST situation for the
7 periods in question.

8 I should first note that the documents include
9 periods prior to 1 October 1996. Given that the assessment in
10 issue covers a period beginning on 1 October 1996, I do not need
11 to consider anything prior to that time.

12 In A-1 and A-3, we have invoices from Auto
13 Noratel to the Appellant's company as well as receipts and
14 cheques. It was admitted that the invoices from Noratel and the
15 receipts were prepared after the auditor's work. Mr. Mansour says
16 this was done to restructure the transactions, to properly
17 reflect sales from Noratel to the Appellant.

18 Invoices and receipts prepared after the
19 period can have no value whatsoever. To claim an ITC in the
20 period, there must be GST paid or payable within the period.
21 There is no proof in front of me that any GST was payable or paid
22 by the Appellant to Noratel in the period.

23 More generally, I have another difficulty with
24 A-1 and A-3. Exhibit R-9 consists of copies of the Appellant's
25 GST returns from May 1997 to August 1997. If one adds up the
26 output tax shown, one gets roughly \$40,000 in output tax. If one

1 adds up the output tax in the summaries for the same period as
2 R-9 in exhibit A-1 and A-3 - and I note that A-1 and A-3 have the
3 same summaries - then one gets an output tax that is something
4 like seventy percent lower than that filed in the original
5 returns.

6 Put another way, car sales are dramatically
7 lower than as filed. Mr. Mansour takes the position that this
8 results from separating out the Appellant and Noratel.
9 Unfortunately, this cannot be reconciled with the testimony that
10 Noratel did its repair work for the Appellant. The number of car
11 sales and the car sale price does not change because Noratel did
12 work for the Appellant.

13 When one compares the ITCs claimed in the
14 returns in R-9 with the same period in A-1 and A-3, one finds
15 that the ITCs claimed have dropped by somewhat less than one half
16 but the net results of the changes in output tax and ITCs is that
17 in the period of 28 months there is now, according to the
18 Appellant, a very substantial net tax refund owing, quite
19 different from what was filed.

20 I do not accept Mr. Mansour's explanations, I
21 do not accept this evidence. I do not see why in 1999, on filing
22 the returns, he would think that the company sold more cars in
23 dollar value than it did but later, he would be aware that the
24 correct value of car sales and the correct value of GST collected
25 would be much lower.

26 There are other problems with the evidence

1 presented by the Appellant but for the reasons I have just given,
2 that alone results in my rejecting the Appellant's evidence.

3 The Appellant argued that the level of
4 expenses implied by the audit was inconsistent with the sales. I
5 would only observe that the question here is: what GST did the
6 Appellant company pay (GST that gives rise to ITCs for the
7 Appellant)? It is not what some other company or some other
8 person paid; it is not what the level of expenses is. This is not
9 an income tax appeal; it is not a calculation of profit.

10 In the absence of proper books and records, it
11 is not surprising that there are difficulties. The burden of
12 proof is on the Appellant, I do not find that I have heard any
13 evidence that would be a basis for me to change the assessment.

14 Penalty was levied under section 280. There is
15 nothing in the evidence to suggest due diligence and I conclude
16 that the penalty must be maintained.

17 Finally, I noted earlier that the Respondent
18 conceded a mathematical error in R-5. The error is \$5,579.66. As
19 a result, I will allow the appeal only to the extent of the
20 concession but not otherwise. Consequently, the appeal will be
21 allowed and the assessment sent back to the Minister for
22 reconsideration and reassessment on the basis that the amount of
23 input tax credit disallowed, which is shown as \$24,850.77 on page
24 2 of R-5, should be reduced by an amount of \$5,579.66.

25 I award costs to Her Majesty the Queen.

26

END OF JUDGMENT

CITATION: 2007TCC400

COURT FILE NO.: 2002-795(GST)G

STYLE OF CAUSE: AUTOMOBILES CAMTEK-ER LTÉE
AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Québec

DATE OF HEARING: April 13, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF ORAL JUDGMENT: April 13, 2007

DATE OF EDITED REASONS
FOR JUDGMENT: July 11, 2007

APPEARANCES:

Agent for the Appellant: Mamdouh Mansour

Counsel for the Respondent: Alain-François Meunier

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada