

Docket: 2003-3394(GST)I

BETWEEN:

9049-7769 QUÉBEC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Motion heard on January 6, 2004, in Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Representative of the Appellant: Christian Alcindor

Counsel for the Respondent: Nicolas Simard

ORDER

Upon motion by the Respondent for an order to dismiss the appeal for lack of jurisdiction of the Court;

The motion is granted and the appeal of the decision by the Minister of National Revenue dated September 4, 2003, is dismissed, for lack of jurisdiction of the Court, in accordance with the following Reasons for Order.

Signed at Ottawa, Canada, this 5th day of February 2004.

"Louise Lamarre Proulx"

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Lamarre Proulx J.

Translation certified true
on this 29th day of December 2004.

Colette Dupuis-Beaulne, Translator

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REASONS FOR ORDER

Lamarre Proulx J.

[1] This is a motion to dismiss the Appellant's appeal on the grounds that the Court lacks jurisdiction to hear this appeal.

[2] The Appellant filed a notice of appeal on September 18, 2003, from a decision of the Canada Customs and Revenue Agency ("CCRA"), rendered on September 4, 2003, concerning an application for refund of customs duty under the *Exported Motor Vehicles Drawback Regulations*, SOR/96-34, which were made under the authority of the *Customs Tariff*, R.S.C., 1985 (3rd Supp.) c. 41.

[3] According to the notice of appeal, the goods and services tax paid pursuant to Division III of the *Excise Tax Act* (the "Act") was refunded. I thus need not consider the jurisdiction of this Court in this regard.

Analysis and conclusion

[4] It is first necessary to refer to section 12 of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, which provides that the Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under

certain acts mentioned therein, where references or appeals to the Court are provided for in those Acts.

[5] The representative of the Appellant referred to Division III of the *Act*, which is entitled: "*Tax on Importation of Goods*".

[6] According to section 214, tax on goods under this Division shall be paid and collected under the *Customs Act*. The only provisions in Division III that clearly grant jurisdiction to our Court are subsections 216(4) and 216(5), which deal with classification of goods.

[7] Here the subject of the appeal is a refund of customs duty. I do not see any provision in Division III of the *Act* that grants jurisdiction to our Court in this regard.

[8] Generally speaking, the jurisdiction of the Court pursuant to the *Act* stems from sections 301 and following of the *Act*. This jurisdiction starts with the assessment of a person. Here, there was no assessment. Subsection 296(1) of the *Act*, which gives the Minister of National Revenue authority to assess, does not include tax payable pursuant to Division III of the *Act*.

[9] This subsection reads as follows:

296(1) The Minister may assess:

- (a) the net tax of a person under Division V for a reporting period of the person,
- (b) any tax payable by a person under Division II, IV or IV.1,
- (c) any penalty or interest payable by a person under this Part,
- (d) any amount payable by a person under any of paragraphs 228(2.1)(b) and (2.3)(d) and section 230.1, and
- (e) any amount which a person is liable to pay or remit under subsection 177(1.1) or Subdivision a or b.1 of Division VII,

and may reassess or make an additional assessment of tax, net tax, penalty, interest or an amount referred to in paragraph (d) or (s).

[10] In conclusion, we are not dealing with classification of goods and there was no assessment.

[11] Consequently, the motion is granted and the appeal is dismissed for lack of jurisdiction of this Court.

Signed at Ottawa, Canada, this 5th day of February 2004.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 29th day of December 2004.

Colette Dupuis-Beaulne, Translator

