

Federal Court



Cour fédérale

Date: 20170510

Docket: T-1477-16

Citation: 2017 FC 483

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 10, 2017

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

MICHAUD PETROLEUM INC.

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Michaud Petroleum Inc. is applying for judicial review of a decision rendered by the Appeals Division of the Canada Revenue Agency on August 11, 2016. It is doing so even though the Agency allowed its objection in whole and refunded it the sum of \$393,920, which represented the excise tax paid on the purchase of a certain quantity of petroleum products from Le Groupe Harnois Inc. that are to be processed and sold.

[2] The Agency concluded that since the applicant is a licensed manufacturer within the meaning of paragraph 2(1)(f) of the *Excise Tax Act*, RSC 1985, c E-15 [ETA] and the petroleum products purchased from Harnois were incorporated into articles or products subject to excise tax, it is exempt from paying the tax under ETA subsection 23(7). Since the tax was paid by reason of mistake of fact or law or otherwise, Michaud is entitled to the refund.

[3] The applicant is seeking several remedies, primarily an order requiring the Agency to amend its decision under review so that the excise tax refund by the Agency is made under ETA section 68.2, rather than under subsection 68(1).

[4] The applicant is seeking that conclusion for the vague reason that the Agency's position that section 68.2 of the ETA does not apply to the sale of petroleum products between Harnois and Michaud [TRANSLATION] "hinders the proper functioning of the company's business and renders its manufacturer's licence useless . . . because its suppliers cannot and will not be able to obtain reimbursement directly from the Canada Revenue Agency for the excise tax" that they paid (see Hermel Michaud's affidavit at paragraphs 19–20).

[5] In other words, and although the applicant does not express it as clearly, it is asking the Court to interpret the ETA in such a way that its supplier, Harnois, be exempt from paying the excise tax when the applicant purchases petroleum products, while the ETA does not grant it such an exemption.

[6] The respondent raises a certain number of preliminary questions about the applicant's application for judicial review, which I will not discuss given my conclusion that section 68.2 of the ETA does not apply to the sale of petroleum products between Harnois and Michaud.

[7] The applicant based its objection on subsection 81.33(1) of the ETA, which provides that when a vendor of goods has made an application for refund under section 68.2 and the application was rejected in whole or in part, and subsequently the vendor was assessed tax by the Minister, the purchaser may, in substitution for the vendor, institute recovery proceedings. The applicant therefore argues that it is simply exercising Harnois' recovery rights.

[8] Subsection 68.2(1) provides the following:

68.2 (1) Where tax under Part III or VI has been paid in respect of any goods and subsequently the goods are sold to a purchaser in circumstances that, by virtue of the nature of that purchaser or the use to which the goods are to be put or by virtue of both such nature and use, would have rendered the sale to that purchaser exempt or relieved from that tax under subsection 23(6), paragraph 23(8)(b) or subsection 50(5) or 51(1) had the goods been manufactured in Canada and sold to the purchaser by the manufacturer or producer thereof, an amount equal to the amount of that tax shall, subject to this Part, be paid to the person who sold the goods to that purchaser if the person who sold the goods applies therefor within two years after he sold the goods.

[9] One of the conditions for this provision to apply to the sale of goods between Harnois and Michaud is for Harnois to be a licensed wholesaler under subsection 23(6) of the ETA.

[10] However, it is not, and it is instead paragraph 23(7)(a) of the ETA that applies in this case and that exempts the sale between Harnois and Michaud from tax. To be exempt under that provision, the sale of goods must meet three conditions:

- A licensed manufacturer purchases or imports goods under ETA Part III;
- The goods are “incorporated into and form a constituent or component part of an article or product that is subject to excise tax under this Act”;
- The tax has not yet been levied.

[11] Michaud is a licensed manufacturer and purchases the goods for processing and resale to third parties. It is exempt from sales tax, but when it resells products, that sale is subject to the excise tax.

[12] The Agency therefore acted correctly in concluding that the sale of products between Harnois and Michaud was tax exempt under paragraph 23(7)(a) of the ETA and that the tax had been paid by mistake.

[13] Moreover, the applicant’s reliance on the Canadian International Trade Tribunal’s decision in *Sani Métal Ltée v Canada (National Revenue)*, 1997 CanLII 11986 (CA CITT) is misplaced. In addition to the fact that the decision was rendered by an administrative tribunal and is not binding on this Court, there is reason to distinguish the facts of that case from those of the one at bar. Sani Métal is a manufacturer and distributor of equipment used in the manufacture or production of food or drink, and is therefore exempt from the excise tax pursuant to

subsection 51(1), to which section 68.2 of the ETA refers. As indicated above, that is the condition that the sale between Harnois and Michaud does not meet.

[14] For that reason alone, the applicant's application for judicial review will be dismissed, with costs.

JUDGMENT in T-1477-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. Costs are awarded to the respondent.

“Jocelyne Gagné”

Judge

Certified true translation
This 5th day of August 2019

Lionbridge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1477-16

STYLE OF CAUSE: MICHAUD PETROLEUM INC. v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: APRIL 27, 2017

JUDGMENT AND REASONS: GAGNÉ J.

DATED: MAY 10, 2017

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