



STATE TAX COMMISSION

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-3850

November 23, 1976

Granville Tobacco Co., Inc.
1757 Nostrand Avenue
Brooklyn, N.Y.

Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ⁴⁷⁸ ~~(a)~~ of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within 4 months
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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|--|---|----------|
| In the Matter of the Application | : | |
| of | : | |
| GRANVILLE TOBACCO CO., INC. | : | DECISION |
| for a License as a Wholesale Dealer of | : | |
| Cigarettes under Article 20 of the Tax | : | |
| Law. | : | |

Petitioner, Granville Tobacco Co., Inc. of 1757 Nostrand Avenue, Brooklyn, New York, has filed a protest against the denial of its application for a license as a wholesale cigarette dealer under Article 20 of the Tax Law, and demanded a reconsideration of that application. (File No. 0-0011889). A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on April 26, 1976 at 1:30 P.M. Petitioner appeared by Theodore T. Jones, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

ISSUE

Whether denial of an application for license as a wholesale cigarette dealer under Article 20 of the Tax Law was proper where the denial for cause is based on alleged information undisclosed to the applicant.

FINDINGS OF FACT

1. Petitioner, Granville Tobacco Co. Inc., is a New York corporation organized August 25, 1975 and wholly owned by Granville Brice. As president of the corporation, said Granville Brice filed an application for license as a wholesale cigarette dealer on September 4, 1975.

2. Said applicant was made on Form MT-343 supplied by the Miscellaneous Tax Bureau. The form made no inquiry as to arrest or conviction records of the petitioner or its officers. The application was not required to be sworn.

3. By a letter dated September 25, 1975, the Miscellaneous Tax Bureau notified petitioner, Granville Tobacco Co. Inc., that its application for license as a wholesale dealer of cigarettes had been disapproved.

4. On October 6, 1975 petitioner, Granville Tobacco Co. Inc., by its attorney, requested a statement as to the reasons for the adverse determination, and asked for a formal hearing.

5. A letter from the Miscellaneous Tax Bureau dated October 20, 1975 advised the attorney for the petitioner that the application had been "disapproved for cause under the powers granted the New York State Tax Commission by Section 480 of Article 20 of the Tax Law".

6. The attorney for the petitioner, Granville Tobacco Co. Inc., conceded that Granville Brice, president of the applicant corporation, had been convicted on 8/26/64 as an unlicensed licensed operator of a motor vehicle and had been fined \$100.00. No written or oral proof of any other arrest or conviction was adduced.

7. The Miscellaneous Tax Bureau neither produced evidence of the basis for its alleged "cause" for disapproving the application for license nor informed the applicant as to what constituted said "cause".

CONCLUSIONS OF LAW

A. That it is a general proposition that the power to grant a license necessarily implies power to withhold it for good cause. Barton Trucking Corp. v. O'Connell, 197 N.Y.S. 2d 138, 144, 7N.Y. 2d307 (1959).

B. That a refusal to grant a license must be based on grounds which may properly be considered under the statute, and it must be supported by evidence. 53 C.J.S. # 38 - Discretion in Granting or Refusing a License; Hoster v. Holz, 171 N.Y.S. 2d65, 3 N.Y. 2d639, 148N.E. 2d 287.

C. That the proposition advanced in Barton Trucking Corp. v. O'Connell (Supra) applies here:

"Even assuming that the Commissioner did have power to pass upon character and fitness, the court below felt that the evidence before him was utterly insufficient to sustain his conclusion of present unfitness. An old conviction and some old arrests, without more, does not establish unfitness".

The cause cited as a basis for the denial of license was not reasonable nor sustained by sufficient evidence.

D. The application of Granville Tobacco Co. Inc. is granted. The denial of a license as a wholesale cigarette dealer is annulled. The Miscellaneous Tax Bureau is directed to process Granville Tobacco Co., Inc's. application in accordance with this decision.

DATED: Albany, New York
November 23, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

FORMAL HEARING

TA-26 (4-76) 25M

STATE OF NEW YORK
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