



Ottawa, Monday, April 5, 1993

Appeal No. AP-91-173

IN THE MATTER OF an appeal heard on
December 9, 1992, 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 October 30, 1991, with respect to
a notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

PAL-BAC DEVELOPMENTS LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Kathleen E. Macmillan

Kathleen E. Macmillan

Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh

Member

Michèle Blouin

Michèle Blouin

Member

Michel P. Granger

Michel P. Granger

Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-173

PAL-BAC DEVELOPMENTS LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the appellant is entitled, under subsection 120(3) of the Excise Tax Act, to a federal sales tax inventory rebate in respect of lumber, bricks, gravel, concrete and window wells used by the appellant in its construction activities. The application was disallowed, as it was determined that the "building materials included in the application were delivered to a job site before January 1, 1991."

***HELD:** The appeal is dismissed. It is well established in Canadian tax law that mere allegations are not sufficient to contradict the facts on which an assessment of tax is based. It is the Tribunal's view that this axiom is equally applicable to determinations under the Excise Tax Act. A representative of the appellant did not appear at the hearing, nor was any corroborating evidence provided to support the allegation that the goods in issue had not been delivered to a construction site prior to January 1, 1991. Mere allegations are not sufficient to displace the presumption that the facts, on which the Minister of National Revenue's determination was based, were correct. The appellant had the onus to produce evidence to displace that presumption, but it did not do so. Accordingly, the goods in issue cannot qualify as "inventory" for which the federal sales tax inventory rebate is available.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: December 9, 1992
Date of Decision: April 5, 1993*

*Tribunal Members: Kathleen E. Macmillan, Presiding Member
Sidney A. Fraleigh, Member
Michèle Blouin, Member*

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Janet Rumball

Appearance: Frederick Woyiwada, for the respondent

Appeal No. AP-91-173

PAL-BAC DEVELOPMENTS LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member
SIDNEY A. FRALEIGH, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from a determination of the Minister of National Revenue (the Minister) disallowing the appellant's application for a federal sales tax (FST) inventory rebate in the amount of \$4,200. The goods in issue consist of lumber, bricks, gravel, concrete and window wells used by the appellant in its construction activities. The application was disallowed, as it was determined that the "building materials included in the application were delivered to a job site before January 1, 1991." The determination was confirmed by notice of decision of the Minister dated October 30, 1991.

The issue in this appeal is whether the appellant is entitled, under subsection 120(3) of the Act² to an FST inventory rebate in respect of the goods in issue. Subsection 120(3) states:

Subject to this section, where a person who, as of January 1, 1991, is registered under Subdivision d of Division V of Part IX has any tax-paid goods in inventory at the beginning of that day,

(a) where the tax-paid goods are goods other than used goods, the Minister shall, on application made by the person, pay to that person a rebate in accordance with subsections (5) and (8).

For purposes of this appeal, "inventory" is defined in subsection 120(1) of the Act as follows:

"inventory" of a person as of any time means items of tax-paid goods that are described in the person's inventory in Canada at that time and that are

...

(b) building materials held at that time for use by the person in a business of constructing, renovating or improving buildings or structures carried on by the person, but not including any such goods that before that time have been incorporated into new construction or a renovation or improvement or have otherwise been delivered to a construction, renovation or improvement job site.

A representative of the appellant chose not to attend the hearing before the Tribunal, though two postponements were granted to accommodate his attendance. In its brief, the appellant included a handwritten inventory list as of December 31, 1990, indicating materials

1. R.S.C. 1985, c. E-15.

2. S.C. 1990, c. 45, s. 12.

purchased in 1990. The inventory consisted of materials remaining from purchases made and unused in 1990. According to the appellant, the materials were held as inventory at the appellant's construction yard at Alliston, Ontario, on December 31, 1990. They were delivered to a construction site in Aurora, Ontario, in March 1991 and used in the construction of homes. FST was paid on all these purchases.

In reply to the respondent's brief, issue was taken with the argument that the appellant's inventory system was not adequate to permit a reasonable determination of its inventory. The appellant's position is that there is no better method to determine inventory than an actual physical count and pricing by an independent firm of chartered accountants. The appellant's accounting firm made such a count, as the appellant was aware that the ensuing documentation would be necessary in claiming the rebate. The appellant asserted that an auditor from the Department of National Revenue (Revenue Canada) failed to visit its storage yard to establish what materials were still on hand and limited the examination to an irrelevant review of cash disbursements. The appellant had sales in excess of \$5 million every year, and to suggest that it would have no inventory is unreasonable.

Counsel for the respondent called one witness, Ms. Grace Lau, a certified general accountant, who is employed by Revenue Canada as an excise auditor. Ms. Lau testified that, in June 1992, she went to the offices of Pal-Bac Developments Limited (Pal-Bac) to determine if the construction materials for which the appellant claimed an FST inventory rebate were on hand or delivered to a job site on January 1, 1991. She indicated that the appellant's records lacked the normal documentation, such as delivery slips and purchase orders, that a construction company like the appellant would normally have. From Pal-Bac's financial statements, the witness calculated that the appellant had approximately \$1.5 million to \$2 million worth of work in progress for the years ending August 31, 1990, and 1991. The appellant claimed an amount in inventory of \$75,000, which the witness described as "substantial." She declared that this represented approximately 3 percent of work in progress and that she would expect to find a system in place for keeping track of that volume of inventory. She could find no system for keeping track of the inventory and received a negative response to a request for any such records. With regard to the inventory list submitted by the appellant, she noted that the dollar values were all even numbers, which suggested to her, as an accountant, that they were estimates. She could find no substantiation for the figures provided by the appellant. Also, she suggested that the phrase "bricks on site and lumber on site," describing the appellant's inventory on the application for a rebate, could lead an auditor to believe that the inventory had been delivered to a construction site.

Counsel for the respondent declared that the respondent pays a rebate to any person who had any unused tax-paid goods in inventory as of January 1, 1991. A person's inventory as of January 1, 1991, may be determined before or after that date, where the respondent is satisfied that the person's inventory system is adequate to permit a reasonable determination of the inventory as of January 1, 1991.

Citing the definition of "inventory" in subsection 120(1) of the Act, counsel contended that, to be considered inventory, building materials must:

- (a) be tax-paid goods;
- (b) be described in the person's inventory;
- (c) be held for use in a construction business; and
- (d) not have been delivered to a job site.

Counsel submitted that, if the other issues were resolved in favour of the appellant, the respondent would not take issue with points (a) and (c) above.

It was the position of the respondent, however, that the evidence submitted by the appellant did not satisfy its onus to establish:

- (a) that its inventory system was adequate to permit a reasonable determination of its inventory as of January 1, 1991;
- (b) that any building materials were held by it on January 1, 1991; and
- (c) that any such materials had not been delivered to a job site.

Counsel submitted, therefore, that the appellant had not established that, on January 1, 1991, it held inventory qualifying for a rebate under section 120 of the Act.

Since the decision of the Supreme Court of Canada in *Roderick W.S. Johnston v. Minister of National Revenue*,³ it is well established in Canadian tax law that mere allegations are not sufficient to contradict the facts on which an assessment of tax is based. It is the Tribunal's view that this axiom is equally applicable to determinations made pursuant to the Act.

The appellant was denied an FST inventory rebate with respect to the goods in issue, as the Minister determined that they had been delivered to a job site before January 1, 1991. As such, they did not qualify as inventory within the meaning of the definition of "inventory" under paragraph (b) of subsection 120(1) of the Act. In its notice of objection, the appellant claimed that the goods in issue were leftover materials from a construction project in Alliston, Ontario, which were moved to a new construction site in Aurora, Ontario, in the spring of 1991. It was the appellant's position that the materials were not work in progress and were not on site or used at December 31, 1990. In its brief, the appellant repeated these allegations, while providing the Tribunal with no substantiating evidence, nor did a representative of the appellant attend the hearing to support these allegations. As stated above, mere allegations are not sufficient to displace the presumption that the facts, on which the Minister's determination was based, were correct. The appellant had the onus to produce evidence to displace that presumption, but it did not do so. Accordingly, the goods in issue cannot qualify as "inventory" for which the FST inventory rebate is available.

For the foregoing reasons, the appeal is dismissed.

Kathleen E. Macmillan

Kathleen E. Macmillan
Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Michèle Blouin

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Member

3. [1948] S.C.R. 486.