



Ottawa, Friday, January 15, 1993

Appeal No. AP-91-209

IN THE MATTER OF an appeal heard on October 19, 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 December 27, 1991, with respect to
a notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

HAROLD K.G. LEACH, D-JOE SIGNS

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Desmond Hallissey

Desmond Hallissey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-209

HAROLD K.G. LEACH, D-JOE SIGNS

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 rebate of federal sales tax paid on the goods in issue. Such goods are used in the appellant's business of manufacturing and selling signs. They include silk screen inks, paints for backing and lettering, cleaning fluids for paints and screens, vinyls, decal materials, process camera films, developing fluids, and metals and plastics on which signs are printed or painted. Specifically, the Tribunal must determine whether these goods qualify as tax-paid goods held in inventory on January 1, 1991, for taxable supply by way of sale to others in the ordinary course of the appellant's business.

HELD: *The appeal is allowed. The Tribunal believes that goods on which tax was paid and held for further manufacture, or held as inputs into the manufacture of goods, still constitute "taxable supply" and qualify for the rebate.*

Place of Hearing: Edmonton, Alberta
Date of Hearing: October 19, 1992
Date of Decision: January 15, 1993

Tribunal Members: Arthur B. Trudeau, Presiding Member
Sidney A. Fraleigh, Member
Desmond Hallissey, Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Dyna Côté

Appearances: Harold K.G. Leach, for the appellant
Linda J. Wall, for the respondent

Appeal No. AP-91-209

HAROLD K.G. LEACH, D-JOE SIGNS

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
SIDNEY A. FRALEIGH, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of a determination of the Minister of National Revenue (the Minister) disallowing the appellant's application for a federal sales tax inventory rebate in the amount of \$1,673.44. The Minister's determination was made on the basis that the appellant's "inventory of raw materials to be used ... in the manufacturing of goods does not qualify for a rebate since those goods are not for sale, lease or rental to customers." The appellant objected to the determination, which was confirmed by a notice of decision of the Minister.

In 1990, the appellant was in the small sign business with sales not exceeding \$50,000 per year. As such, the company was considered a small manufacturer for purposes of the Act and was not required to hold a licence for purposes of Part VI of the Act, being the consumption or sales tax provisions. Accordingly, the appellant had to pay tax on its purchases of material inputs, but was exempt from the payment of consumption or sales tax on the goods manufactured or produced by it.

The goods in issue are used in the appellant's business of manufacturing and selling signs. They include silk screen inks, paints for backing and lettering, cleaning fluids for paints and screens, vinyls, decal materials, process camera films, developing fluids, and metals and plastics on which signs are printed or painted.

The issue in this appeal is whether the appellant is entitled, under subsection 120(3)² of the Act, to a rebate of federal sales tax paid on the goods in issue. Specifically, the Tribunal must determine whether the goods qualify as tax-paid goods held in inventory on January 1, 1991, for taxable supply by way of sale to others in the ordinary course of the appellant's business.

1. R.S.C. 1985, c. E-15.
2. S.C. 1990, c. 45.

For purposes of this appeal, the relevant rebate provisions of the Act are found at subsection 120(3), which state,

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 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).

At the hearing, counsel for the respondent acknowledged that her arguments in opposition to the appellant's eligibility to the rebate were similar to those expressed in a recent appeal,³ which were rejected by the Tribunal. As such, she instructed the Tribunal that her client, the respondent, without consenting, would not oppose the appeal.

In the *Techtouch* appeal, counsel for the respondent admitted that the components in issue were tax-paid goods within the meaning of section 120 of the Act. However, relying upon the definition of "inventory" in section 120, which refers to "tax-paid goods that are described in the person's inventory in Canada at that time and that are ... held at that time for taxable supply ... by way of sale, lease or rental," counsel contended that components for which the rebate was claimed were used in the manufacture or production of finished goods rather than in the provision of a taxable supply.

Contrary to the position of the respondent, the Tribunal believes that goods on which tax was paid and held for further manufacture, or held as inputs into the manufacture of goods, still constitute "taxable supply" and qualify for the rebate. Accordingly, the appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Desmond Hallissey

Desmond Hallissey
Member

3. *Techtouch Business Systems Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-206, September 18, 1992.