



Ottawa, Monday, February 8, 1993

**Appeal No. AP-91-211**

IN THE MATTER OF an appeal heard on December 14, 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 24, 1991, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**OASIS GALLERY**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-91-211**

**OASIS GALLERY**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*This is an appeal under section 81.19 of the Excise Tax Act, from a decision of the Minister of National Revenue dated December 24, 1991. The issue is whether the appellant is entitled to a federal sales tax inventory rebate pursuant to section 120 of the Excise Tax Act in respect of framed pictures, and unframed pictures and parts and components used in the production of framed pictures, held in inventory on January 1, 1991.*

**HELD:** *The appeal is allowed.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: December 14, 1992  
Date of Decision: February 8, 1993*

*Tribunal Members: Charles A. Gracey, Presiding Member  
John C. Coleman, Member  
Arthur B. Trudeau, Member*

*Counsel for the Tribunal: Shelley Rowe*

*Clerk of the Tribunal: Janet Rumball*

**Appeal No. AP-91-211**

**OASIS GALLERY**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
JOHN C. COLEMAN, Member  
ARTHUR B. TRUDEAU, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) from a decision of the Minister of National Revenue (the Minister), dated December 24, 1991, disallowing part of the appellant's claim for a federal sales tax inventory rebate (FST rebate) under section 120 of the Act. The Tribunal notes that the parties filed an agreed statement of facts on September 30, 1992, and have asked the Tribunal to proceed on the basis of written documentation before it in accordance with rule 25 of the *Canadian International Trade Tribunal Rules*.<sup>2</sup>

The issue is whether the appellant is entitled to an FST rebate pursuant to section 120 of the Act in respect of framed pictures, and unframed pictures and parts and components used in the production of framed pictures, held in inventory on January 1, 1991.

On January 9, 1991, the appellant, a Goods and Services Tax registrant since January 1, 1991, filed a claim for an FST rebate in the amount of \$3,967.66 under section 120 of the Act. The amount of the claim was calculated on the value of the alleged tax-paid goods held in inventory by the appellant on January 1, 1991. These goods included pictures which were framed by the appellant, and parts and components to be used by the appellant for custom framing and for the production of framed pictures. The parts and components consisted of finished wood and metal framing materials, mat board, glass, mountings, hardware, adhesives and other various framing accessories, such as hangers and easel backs. In the Minister's notice of determination dated March 5, 1991, the appellant was only allowed a rebate in the amount of \$159.25 based on the reasoning that the goods were purchased for further manufacture, namely, the production of framed pictures and custom picture framing and, consequently, were not eligible for the rebate. Since the goods would not be sold in the condition in which they were held in inventory, they could not be said to be held for "taxable supply by way of sale" as required under section 120 of the Act. This determination was confirmed by the Minister.

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

2. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18, p. 2912.

The appellant, in its brief, argued that the goods held in its inventory were produced by assembling components on which tax had been paid at the time of purchase. As a result, the finished products contained no tax-free elements, and tax was paid on the full value of the finished products.

The respondent argued that the goods are not held in the appellant's "inventory" within the meaning of the Act. Under subsection 120(1) of the Act "inventory" is defined as goods:

*held at that time for taxable supply<sup>3</sup> (within the meaning assigned by subsection 123(1)) by way of sale, lease or rental to others in the ordinary course of the person's business.*

The respondent submitted that since the goods are given new forms and qualities by the appellant when used to produce framed pictures and for custom framing, they are held for the purpose of manufacture, and not for the purpose of sale in the ordinary course of the appellant's business. Based upon this analysis, the goods do not meet the definition of "inventory" under subsection 120(1) of the Act and do not meet the requirement that they be held "in inventory" under paragraph 120(3)(a)<sup>4</sup> of the Act.

Further, the respondent argued that the goods in issue are not "tax-paid goods" within the meaning of subsection 120(1) of the Act. Under subsection 120(1), "tax-paid goods" are defined as:

*goods, acquired before 1991 by a person, that have not been previously written off in the accounting records of the person's business for the purposes of the Income Tax Act and that are, as of the beginning of January 1, 1991,*

*(a) new goods that are unused,*

*(b) remanufactured or rebuilt goods that are unused in their condition as remanufactured or rebuilt goods, or*

*(c) used goods*

*and in respect of which tax imposed under subsection 50(1) (other than tax paid by the person under subparagraph 50(1)(a)(ii)) has been paid and is not, but for this section, recoverable.*

In order to qualify as "tax-paid goods," the goods must be held at that time for taxable supply by way of sale, lease or rental. In addition, the tax imposed under subsection 50(1) of the Act must have been paid in relation to the goods. The respondent submitted that once the components were used to produce framed pictures, the finished products became goods distinct

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3. Subsection 123(1) of the Act defines "taxable supply" as follows: "a supply that is made in the course of a commercial activity, but does not include an exempt supply."

4. "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)."

from the components on which tax had been paid. Since tax has not been paid on the finished product, it does not qualify as "tax-paid goods" under section 120 of the Act.

The Tribunal disagrees with the respondent's submission that the FST rebate provisions under section 120 of the Act should be interpreted narrowly such that raw materials or components on which tax has been paid, but which have subsequently been incorporated into, or are intended to be incorporated into, a finished product, are ineligible for an FST rebate. The Tribunal interprets the definitions of "inventory" and "tax-paid goods" under section 120 of the Act broadly and finds that the framed pictures, and unframed pictures and parts and components in issue, used in the production of framed pictures, were held for sale by the appellant on January 1, 1991, and that they fall within the definition of "tax-paid goods" which are held "in inventory" under section 120 of the Act. That some of the tax-paid raw materials or components were incorporated into a finished product or were intended to be incorporated into a finished product prior to being sold does not alter the fact that tax was paid on the raw materials or components and, accordingly, does not affect the appellant's eligibility for an FST rebate on the basis claimed, that is, on the inventory value of the raw materials or components. This view is consistent with the decisions<sup>5</sup> in three recent appeals where the Tribunal considered the issue of eligibility for an FST rebate under section 120 of the Act.

The appeal is therefore allowed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

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5. *Techtough Business Systems Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-206, September 18, 1992; *Valleybrook Gardens Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-186, October 19, 1992; and *A.J.V. Tools Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-229, December 16, 1992.

SEPARATE REASONS OF MEMBER TRUDEAU

I agree with my colleagues that this appeal be allowed. However, I would arrive at the conclusion differently for reasons stated in *J. & D. Trophies & Engraving v. The Minister of National Revenue*.<sup>6</sup> In my view, the finished products held in inventory on January 1, 1991, which were made from tax-paid components, are eligible for the tax rebate as they constitute tax-paid goods.

Arthur B. Trudeau

Arthur B. Trudeau

Member

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6. Canadian International Trade Tribunal, Appeal No. AP-91-213, January 26, 1993.